(33,983)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 674

HARRY J. KIRK, AS SUPERINTENDENT OF PUBLIC WORKS AND DIRECTOR OF THE DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS OF THE STATE OF OHIO, ETC., ET AL., APPELLANTS,

vs.

THE MAUMEE VALLEY ELECTRIC COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO

INDEX

	Original	Print
Record from the district court of the United States, Southern Ohio	a	1
Caption (omitted in printing)	b	
Bill of complaint	1	1
Praecipe for summons	25	23
Temporary restraining order	26	24
Bond on injunction (omitted in printing)	30	
Orders extending restraining order	33	27
Answer of George F. Schleisinger	37	29
Answer of City of Toledo	45	36
Answer of Villages of Maumee and Waterville	53	43
Answer of Roy E. Davis et al	60	50
Stipulation re evidence, etc	68	57

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	Original	Print
Exhibit No. 1—Robert J. Law, trustee, lease	79	68
No. 2—Agreement and supplemental lease	86	74
No. 3—Thomas W. Studer lease	89	77
No. 4—A. C. Tryon lease	96	82
No. 5—Maumee Paper Co. lease	100	88
No. 6—George K. Detwiler lease	107	95
No. 7—James Purdy quitclaim grant to State of Ohio	115	101
No. 8—Peter Minor lease	119	104
No. 9—Proceedings of Board of Public Works on claim of Peter Minor	126	110
No. 10—Toledo Grain and Milling Co. lease	133	116
No. 11—Resolution of council of city of Toledo re appraisement, etc	139	122
No. 12—Ordinance No. 3043, passed by city council of Toledo	141	124
No. 13—Resolution by city council of Toledo re cutting off of flow of water of Miami and Erie Canal	142	125
No. 14—Corporation record of Maumee Valley Electric Co., showing electricity generated	144	127
No. 15—Deed from State of Ohio to city of Toledo, December 29, 1922	149	133
No. 16—Final decree in case No. 515, district court of the United States, Northern Ohio	153	137
No. 17—Final decree in case No. 4483, United States circuit court of appeals, sixth circuit	154	138
No. 18—Final decree on mandate from United States circuit court of appeals, case No. 515	155	138
No. 19—Application of Maumee Valley Electric Co. for renewal of certain leases	157	140
No. 20—Petition in case No. 101,344, court of common pleas of Franklin County	158	141
No. 21—Order granting temporary injunction, case No. 101,344	166	149
No. 22—Letter from Maumee Valley Electric Co. to Victor Donahey, April 2, 1925	169	152
No. 23—List of sections of constitution of Ohio, etc	172	154
No. 24—Testimony of H. L. Crawford, E. A. Dorsenski, and L. E. Ayres	177	160
No. 25—Map of Miami and Erie Canal	183	169

	Original	Print
Opinion, Hough, J	184	170
Interlocutory injunction order	200	179
Acknowledgment of service and consent to injunction order	204	182
Bond on interlocutory injunction (omitted in printing)	205	
Motion for substitution of party defendant	208	183
Order substituting Harry J. Kirk as party defendant	210	184
Final decree	212	185
Petition for appeal	216	188
Assignments of error	217	189
Order allowing appeal	219	190
Bonds on appeal (omitted in printing)	220	
Citation and service (omitted in printing)	230	
Precipe for transcript of record	231	191
Stipulation re certification of record	233	192
Clerk's certificate (omitted in printing)	234	
Orders extending time	235	193
Statement of points to be relied upon and designation of parts of record to be printed	236	194
Order enlarging time for docketing case and filing record	199	

[fols. a, b & c] [Caption omitted]

[fol. 1] Copy

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

No. 534. In Equity

THE MAUMEE VALLEY ELECTRIC COMPANY, Plaintiff,

vs.

GEORGE F. SCHLESINGER, as Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio, and Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, as County Commissioners of Lucas County, Ohio; The Village of Maumee, Ohio, and The Village of Waterville, Ohio, and The City of Toledo, Ohio, Defendants

BILL OF COMPLAINT—Filed July 29, 1927

1. Plaintiff is a corporation incorporated, organized and existing since prior to the year 1900 as such corporation under the laws of the State of Ohio with its principal office and place of business at the City of Toledo, Ohio, of which city and state it is a citizen residing in the Western Division of the Northern United States Judicial District of Ohio; that it was and is so incorporated, organized and existing for the purpose of generating electricity and supplying the same to the public for light, heat and power purposes and for the purpose of acquiring, owning and holding all property of any and all kinds necessary or proper to be used in conducting said business, including the acquirement and holding of leases and contracts for water to be used in the generation of such electricity through hydro-electric power plants and otherwise; that defendant George F. Schlesinger is the duly appointed, qualified and acting Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio and as such has jurisdiction over, control and manage-

ment of the canals, canal lands and canal waters belonging to the State of Ohio, including the Miami & Erie Canal belonging to said State, as hereinafter referred to, and that under the laws of Ohio it is his duty as such Superintendent of Public Works and Director of the Department of Highways and Public Works to see that all laws of said state pertaining to the management, control and disposition of [fol. 2] the public works of Ohio, including said Miami & Erie Canal and the canal waters thereof, shall be complied with; that defendants Roy E. Davis, Ralph E. Farnsworth and George R. Hoffman are the duly elected, qualified and acting County Commissioners of Lucas County, Ohio; that each of the defendants, Village of Maumee and Village of Waterville and City of Toledo, Ohio, is a municipal corporation incorporated and organized under the laws of the State of Ohio; that defendant George F. Schlesinger is a citizen of Ohio and a resident and inhabitant of the City of Columbus, Ohio, within the jurisdiction of this court, and that each of the other defendants is a citizen of Ohio and a resident and inhabitant of Lucas County, in the Western Division of the Northern United States Judicial District, in said State.

2. The matter in controversy in this suit exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00) and arises under the Constitution of the United States of America.

3. Plaintiff further says that the State of Ohio, beginning with about the year 1825 under laws passed that year and subsequent thereto, acquired the necessary real estate in fee simple title and provided otherwise for the construction of and constructed and owned in its own right what is known as the Miami & Erie Canal extending from the Ohio River northerly through the City of Cincinnati, Ohio, Dayton and other points northerly to and through the City of Defiance, Ohio, and thence northeasterly from said City of Defiance, Ohio, along or on the Maumee River into and through the City of Toledo, Ohio to Lake Erie; that said canal runs northeasterly from said City of Defiance along the north bank of said Maumee River to a point about twenty (20) miles southwesterly from the Village of Grand Rapids, Ohio; that at said point said canal enters said Mau-

mee River, which river from said point was and is still used as a part of said canal northeasterly to said Village of Grand Rapids, Ohio; that said canal on the north bank of said river at a point opposite said Village of Grand Rapids connects with said river and runs thence northeasterly along the north bank of said river through defendant Villages Waterville and Maumee and from thence on into the City of Toledo as aforesaid; that as a part of the construc-
[fol. 3] tion of said canal and for the purpose of storing water in said river for use in said canal, the State of Ohio, at its own cost and expense, constructed across said river at the Village of Grand Rapids, Ohio, on the south bank of said river northerly to the north bank of said river at a point about one-fourth of one mile northeasterly and down said river from where said canal connects therewith, what is known as the Grand Rapids State Dam; that said dam is about one thousand (1,000) feet long across said river, built of concrete, is ten (10) feet high and stores southwesterly therefrom and up said river a pool of water about one thousand (1,000) feet wide and twenty (20) miles long; that the State of Ohio constructed said canal and said Grand Rapids State Dam under the laws of Ohio, passed as aforesaid, for the purpose of operating or permitting to be operated on said canal canal boats carrying passengers and freight and for the purpose of supplying water for hydraulic purposes and uses in the operation of industrial plants, hydro-electric plants and other industrial enterprises; that said laws, passed by the General Assembly of Ohio in the year 1825 and subsequent years, provided for the location of said route of said Miami & Erie Canal from the Ohio River to Lake Erie and therein authorized the acquirement of the necessary real estate and material and contracts for the construction of said canal and the necessary dams and other equipment for the operation thereof; that under said laws there was created a Board of Canal Commissioners with authority to locate and construct said Miami & Erie Canal and put the same into operation for the purposes of navigation and supplying water for hydraulic power as aforesaid; that said canal was completed and put in operation from the Ohio River northerly and northeasterly as aforesaid to Lake Erie in about the year 1842; that in the year 1828 said Board of Canal Commissioners,

through a law duly passed by the General Assembly, was given power to sell or lease water from said canal whenever in the opinion of the Board any water might be spared from any state canal or works connected therewith without injury to the navigation or safety of such canal, for any term of years in their discretion to any person who should bid the highest annual rent therefor; that in 1830, through [fol. 4] a law duly passed by the General Assembly of Ohio, said Board of Canal Commissioners was given power providing that whenever in the opinion of such Board there should be any water in any state canal, including said Miami & Erie Canal, or passing around locks or stored above any state dam and not necessary for navigation on said canals, said Board might order such water not needed as aforesaid sold or leased for hydraulic purposes, subject to such conditions and reservations as such Board might consider necessary and proper, either in perpetuity or for a limited number of years, for a certain annual rent or otherwise as said Board might deem most beneficial for the interests of the State, said law further providing that every lease, grant or conveyance of water power made under said law should contain a reservation and condition that the State of Ohio might resume the privilege or right to the use of such water sold or leased as aforesaid, or any portion thereof, whenever it might be deemed necessary for the purposes of navigation or whenever the use of such water for hydraulic purposes should be found to interfere with and injuriously affect navigation on the canal from which such water should be taken for hydraulic purposes, and said law further provided that whenever such privilege should be resumed in whole or in part, the sum paid therefor or the rent reserved, or such reasonable portion thereof as might be determined upon agreeably to the conditions and stipulations of the lease aforesaid, should be refunded or remitted to the lessee; and plaintiff says that said law remained in force without change to the year 1917 when it was modified or amended by the General Assembly of Ohio only in that said amendment provided that from the taking effect thereof leases of water from said canals should not be made for a longer term than twenty-five (25) years.

Plaintiff further says that said canal has been completed and in operation for a period of about eighty-five (85)

years and was operated through a portion of that time since its completion, namely to about 1894, for the purpose of navigation thereon by various kinds of canal boats; that prior to said year of 1894 navigation on said canal had [fol. 5] almost disappeared because of failure or refusal of the public to use the same for such purpose and that between the years 1894 and 1900 navigation on said canal entirely ceased as a business for the reasons aforesaid and it has not since been revived.

Plaintiff further says that contemporaneously with the construction of said canal and subsequent thereto the General Assembly of Ohio passed laws commanding and directing the Board of Canal Commissioners, which Board of Canal Commissioners in about the year 1840 was designated through a law passed by the General Assembly as the Board of Public Works, to acquire lands along the line of said canal wherever hydraulic power might be developed, including that part of said canal lying northeasterly from and including the Grand Rapids State Dam, and the General Assembly appropriated and there were expended for such purposes large amounts of money through which hydraulic power was developed at many points on said canal and during said time the General Assembly of Ohio directed said Canal Commissioners and the Board of Public Works to sell any lands not needed belonging to the State along said canal and theretofore acquired except lands at points where hydraulic power might be developed by the State.

4. Plaintiff further says that throughout the time since the completion of said canal as aforesaid it has been continuously operated between and including the cities of Cincinnati and Toledo for the purpose of supplying water for hydraulic power to industrial plants, hydro-electric plants and other industrial purposes, and throughout said time the State of Ohio has entered into a great number of leasing contracts and other contracts granting unto persons, firms and corporations the right to take water from said canal and providing for the payment of rentals in money in such amounts as should be stipulated for such users to pay to the State of Ohio from time to time throughout the rental periods called for in such leases respectively; that the State of Ohio throughout said time has operated said canal,

including that portion thereof lying northeasterly from the Grand Rapids State Dam as aforesaid, as a business of the State and in the aggregate it has realized a great amount of income therefrom.

[fol. 6] Plaintiff further says that relying upon said laws and the constant and continued practice followed by the State of Ohio in granting leases of water from said canal as aforesaid, plaintiff, in the year 1900, became and still is the owner of a lease theretofore granted by the State of Ohio on March 12, 1895, to Robert J. Law, Trustee, wherein it is provided that for a period of thirty (30) years from March 12, 1895, said lessee, his successors and assigns should be entitled to all the water not needed for navigation and not under lease to other parties flowing in said Miami and Erie Canal between the point where said canal connects with the Maumee River above said State Dam as aforesaid and the City of Toledo, said water to be taken out of said canal at said Village of Maumee, Ohio, and be conveyed to the mills or other hydraulic works to be constructed by and at the expense of the lessee; that said lease provided that said lessee, his successors and assigns should pay to the State of Ohio for such water the sum of Five Hundred Dollars ($500.00) per annum; that said rentals have always been paid by plaintiff since its purchase and acquirement of said lease, which purchase and acquirement were made by and with the consent of the State of Ohio; that said lease by its terms provides as a part thereof and as a part of the consideration thereof aforesaid that at the expiration of said lease the lessee or his assigns should be entitled to and should have a renewal of said lease for a like term of thirty years (30) for such annual rental as might be offered by the highest responsible bidder who should also agree to purchase of said lessee or his assigns all permanent and valuable buildings necessarily erected by said lessee for the convenient use of the water power granted and leased as aforesaid, at such price as such buildings might be adjudged to be worth by three (3) judicious disinterested freeholders to be chosen as specified in the lease; but it was and is provided in said lease as a part thereof and as a part of the consideration therefor that if no such bid should be made by any outside person on the terms aforesaid at a higher rate than said rate in said lease specified, then said [fol. 7] original lessee or his assigns should have a renewal

of such lease under all the terms thereof as originally made and for a period of thirty (30) years from March 12, 1925; that plaintiff duly elected to take a renewal of said lease as aforesaid and duly notified the State of Ohio prior to the expiration of said first thirty (30) years of its said election and it duly made application at that time to said State of Ohio for such renewal; that no bid whatever was or has been received by the State of Ohio for such lease and that under the terms thereof as aforesaid said renewal of said lease has become and is now vested in plaintiff for said renewal period of thirty (30) years from March 12, 1925.

Said lease further provides that said lessee and his assigns during the continuance thereof shall, at his or their own expense, keep constantly in good order and repair all the banks and all works and devices of every kind connected with said canal or constituting the same throughout the length of said canal from where it joins the Maumee River above said dam northeasterly to a point north of the point in defendant Village of Maumee where the water granted by the lease is to be used, this covering a distance of about eighteen (18) miles and being known as the eighteen mile level of said canal; that lessee or his assigns at his or their own expense should prevent any breach in the banks of said canal or the formation of any bars or other injury to said canal, and it provides that if lessee or his assigns should fail to do any of the things thus provided for them to do, then the State of Ohio could make such repairs and do any and all other things necessary to restore said canal to and keep it in good condition and when the State should perform such service, lessee or his assigns would be compelled to repay to the State of Ohio all the moneys expended by it in that behalf. Plaintiff further says that it has at all times, since the acquirement by it of said lease, complied with all the terms and conditions thereof and especially it has continually kept said canal and all said parts thereof in good order and repair at its own cost and expense and without any expense whatever to the State of Ohio.

[fol. 8] Said lease further granted to said lessee and his assigns the use, during the continuance of said lease, of a certain parcel of land beginning at the easterly side of River Tract No. 22 in the 12 mile square reserve at the foot of the rapids of Lake Erie in the south margin of the

Miami & Erie Canal at the water edge at any point between the west line of Farrer Street and the east line of Wolcott's Basin in Wolcott's Addition to Maumee and running from thence southerly along and near the west line of Farrer Street to the Maumee River on the bank and along the margin thereof on River Tracts Nos. 21 or 22, by said lease giving, granting and conveying unto said lessee or his assigns all the land in one or both of said River Tracts Nos. 21 and 22 sufficient for all the necessary use and occupation of a water power to enable said lessee or his assigns to use and enjoy said water power throughout the duration of said lease.

5. Plainiff further says that on the acquirement of said lease as aforesaid for carrying on its business of generating electricity for light, heat and power purposes by water power, it acquired a valuable piece of land at Farrer Street in said Village of Maumee on the northerly bank of said Maumee River but southerly and about three hundred (300) feet from the southerly bank of said canal; that there at great expense it erected a hydro-electric plant and installed therein the necessary turbine water wheels and necessary machinery, electrical and otherwise, required for the generation of electricity to be supplied to the public for light, heat and power purposes, said hydro-electric plant to be operated by water power through and by means of said water leased and called for by said lease and to be furnished by the State of Ohio to plaintiff under the terms of said lease; that said Miami & Erie Canal extends and continues from the northerly end of said eighteen mile level on northeasterly a distance of about seven and one-half (7½) miles to its outlet lock and the outlet of said canal into Swan Creek in the City of Toledo, Ohio; that between said hydro-electric plant and said canal at said Farrer Street in Maumee, Ohio, plaintiff constructed at great expense a large water flume [fol. 9] through which and by means of which the water called for by said lease to be furnished to plaintiff by the State of Ohio was, has been and is conveyed southerly to the northerly bank of said Maumee River to a point above said hydro-electric plant and the turbine water wheels thereof at which point said water falls from the surface level of said canal down to the plant's said turbine wheels a distance of approximately sixty-two (62) feet.

6. Plaintiff further says that in the year 1902 the General Assembly of the State of Ohio duly passed an act, which took effect in the month of April that year, through which it was enacted that:

"It is hereby declared as the settled policy of this State that the Miami and Erie Canal, together with its water supplies, reservoirs, dams, feeders and adjacent lands from Cincinnati to Toledo, shall be retained and maintained as a public canal; also that the same policy is hereby declared as to the northern division of the Ohio Canal, together with its water supplies, reservoirs, dams, feeders and adjacent lands from Cleveland to Dresden on the Muskingum River, in Ohio."

7. Relying upon this policy declared by the State of Ohio as aforesaid and upon the long established policy, custom and constant practice followed by the State of Ohio since the construction of said canal in granting leases of water from said canal to water users for hydraulic, hydro-electric and other industrial purposes, as aforesaid, plaintiff, with the consent and approval of the State of Ohio, given through resolutions duly passed by its Board of Public Works, purchased and became and still is the owner of four (4) other leases of water to be delivered to plaintiff at Maumee, Ohio, for the operation of said hydro-electric plant, and plaintiff also on November 10, 1910 entered into a lease and agreement supplementary to said Robert J. Law, Trustee, lease above described, the dates on which plaintiff acquired said four leases and the terms and provisions of said four leases and said supplementary lease being as follows:

A. A water power lease originally granted by the State of Ohio to A. C. Tryon, dated April 8, 1903, for a term of thirty (30) years from the 1st day of May, 1903, and calling for 2,050 cubic feet of water per minute to be taken from the Miami & Erie Canal at Maumee, Ohio, on the payment [fol. 10] by Tryon or his assigns of Three Hundred Dollars ($300.00) Annually to the State of Ohio, which lease expires on the 1st day of May, 1933, and furnishes water to the extent of 58 horse power. This lease was acquired by plaintiff as aforesaid on October 13, 1904.

B. A water power lease originally granted by the State of Ohio to George K. Detwiler for a term of thirty (30) years from the 1st day of May, 1901, dated February 20, 1901, and calling for 833 cubic feet of water per minute to be taken from said canal at Maumee, Ohio, upon the payment by Detwiler or his assigns of the sum of Three Hundred Twenty Dollars ($320.00) annually, which lease expires on the 1st day of May, 1931, and furnishes water to the extent of 50 horse power. This lease was acquired by plaintiff on September 20, 1909.

C. In and by said supplementary lease above mentioned, it is provided that plaintiff should at its own expense remove the rock bars in said Miami & Erie Canal from the Grand Rapids State Dam at Grand Rapids and Providence, Ohio, northerly a distance of eighteen (18) miles to Lock No. 45 in said canal, being said eighteen mile level thereof, which Lock No. 45 is about one (1) mile north of said hydro-electric plant; that plaintiff throughout said distance should remove other obstructions, if any, in said canal and should excavate said canal to a greater depth and width so that an increased amount of water might be carried through the same throughout said distance and to the safe capacity of said canal. Said supplementary agreement further provides that upon the completion of said work just described plaintiff should pay a largely increased rental to the State of Ohio over what it was paying as aforesaid under said Robert J. Law lease, namely, an increased amount of Fifteen Hundred Dollars ($1,500.00) per annum in any and all events, and it provides that plaintiff should in addition to the above rentals pay to the State the sum of Three Hundred Seventy-five Dollars ($375.00) per quarter beginning on the 10th day of April, 1911 for each three months of continuous hydraulic service rendered by the State to the Company under the terms of said Law lease and supplementary agreement during which time a flow of water to the [fol. 11] depth of six (6) inches over the top of the Company's weirs should be maintained without interruption continuing longer than six (6) consecutive hours; that the State of Ohio would let into said eighteen mile level of said canal at Grand Rapids from the pool above said dam, water of Maumee River equal to the safe capacity of said

canal, for use for hydraulic purposes at said hydro-electric plant located near Maumee, and cause a large, steady and even flow of such water as might be practicable except in cases of unavoidable accident or public necessity, all consistent with the rights of navigation on said canal; that under this lease as well as said Robert J. Law lease plaintiff should also bear the cost and expense of keeping the banks of said canal and all parts of the same in good repair throughout said distance from said State Dam to said Lock No. 45; that the State would require its Superintendent of Canals to appoint three (3) patrolmen who should be paid for their services by plaintiff and who should patrol said canal banks between Grand Rapids and said Lock No. 45 to repair breaks in canal banks, stop leaks, remove logs, brush and other impediments to free and even flow of water; that the State sells and leases unto plaintiff all the increased flow of water provided for by said supplementary agreement; that plaintiff should maintain its weir at such level as said Board of Public Works might require; that plaintiff should complete excavation of said rock bars near Waterville, Ohio, as well as remove all other obstructions in said canal on said eighteen mile level and raise the banks thereof with all possible diligence at the sole expense of plaintiff; that said lease is supplementary to said Law lease and was granted for the purposes of enabling the State to give satisfactory and adequate service to plaintiff and to increase the flow of water in said canal between said State Dam and said hydro-electric plant and to increase the revenues to the State of Ohio through said lease.

Plaintiff says that immediately after the execution of said lease it proceeded with said removal of said rock bars and said excavation, deepening and widening said canal, and completed the same in the year 1911 at a cost and expense to plaintiff of Fifty three Thousand Dollars ($53,-[fol. 12] 000.00).

D. A water power lease originally granted by the State of Ohio to the Maumee Paper Company, for a term of thirty (30) years from May 1, 1903, dated April 8, 1903 and calling for 2,050 cubic feet of water per minute to be taken from the Miami & Erie Canal at Maumee, Ohio, upon the payment of rental to said State by said Company or its assigns

of Four Hundred Dollars ($400.00) per annum, which lease expires on the 1st day of May, 1933, and furnishes water to the extent of 52 horse power. This lease was acquired by plaintiff in the year 1912.

E. A water power lease originally granted by the State of Ohio to Thomas W. Studer, for a term of thirty (30) years from the 1st day of November, 1906, dated November 13, 1906, and calling for 2,100 cubic feet of water per minute to be taken from said canal at Maumee, Ohio, upon the payment of rental to said State by said Studer or his assigns of Four Hundred Fifty Dollars ($450.00) annually, which lease expires on November 1, 1936 and furnishes water to the extent of 47 horse power. Plaintiff acquired this lease on December 11, 1913.

8. Except as hereinabove set forth, each of said leases described in sub-paragraphs A, B, D and E contains provisions, terms and conditions the same as the terms and conditions of said Robert J. Law, Trustee, lease, including provisions for the renewal of each of them respectively as contained in said Law lease, and including provisions requiring the lessee or his assigns to keep all parts of said canal in repair at his or their own cost and expense.

Plaintiff further says that at the time it elected to take a renewal of said Robert J. Law, Trustee, lease, as above stated, it also elected to take a renewal of each of said other leases, including said supplementary lease, and at the time filed application with the State of Ohio through its Department of Public Works for such renewal on the terms of each of said leases respectively. Said supplementary lease was renewed with said Law lease.

Plaintiff further says that it has at all times paid and is still paying the rentals to the State of Ohio in accordance [fol. 13] with each and all of said leases hereinabove described, and that it has in all respects fully complied with all the terms and conditions required of it to be complied with in said leases and it has fully done and performed all things required of it by said leases respectively to be done and performed, including the up-keep, maintenance repair and improvement of said canal and all equipment and facilities connected therewith and used in the operation of the

same, from the point where said canal connects with said Maumee River above said Grand Rapids State Dam northeasterly to said Lock No. 45, throughout said eighteen mile level, and plaintiff says that this has been done free of all cost and expense to the State of Ohio, in accordance with said leases, and that it is ready, willing and able to continue and will continue to the end of its said leases, including renewals thereof, to maintain said portion of said canal and parts thereof free of costs and expense to the State of Ohio.

9. Plaintiff further says that when said hydo-electric plant was first constructed, as aforesaid, it was of small capacity, namely, about 400 horse power, but that relying upon the long established policy, custom and constant practice followed by the State of Ohio in granting leases of water from said canals to water users for hydraulic, hydo-electric and other industrial purposes, as described above herein, and relying upon the declaration by the State of Ohio that the said Miami & Erie Canal, together with its water supplies, reservoirs, dams, feeders and adjacent lands from Cincinnati to Toledo should be retained and maintained as a public canal and this even though it was known by the State and the public that navigation on said canals could not be revived, plaintiff greatly increased the capacity of said hydro-electric plant as aforesaid, in that it greatly enlarged the building thereof on the northerly bank of the Maumee River, removed the small turbine wheel therein first installed and then installed in said plant three large, modern turbine water wheels of latest pattern and with a total capacity of about 2,600 horse power, installed all necessary dynamos and other electrical machinery and appliances, together with a small auxiliary steam plant, which auxiliary plant was installed and maintained for the purpose of assisting the water plant in generating electricity [fol. 14] when through dry seasons of the year it should not be possible to obtain water to run said water wheels to their capacity; that all this cost and expense was incurred and this plant was built to its present capacity and completion prior to the year 1915 and throughout all said time said pla-t has been operated and is still being operated with said water power under said leases in the generation of

electricity, which has been throughout said time and still is being sold to the public for light, heat and power purposes; that said hydro-electric plant, including the land, buildings and equipment thereon, is of a value of not less than Three Hundred Thousand Dollars ($300,000.00) used in connection with said water rights and that said leases and the water rights secured thereunder are of very great value, namely, a minimum value of Four Hundred Fifty Thousand Dollars ($450,000.00) and this is so partly because of the fact that through them power is furnished at a cost and expense in the generation of electricity far below what the cost and expense is or would be in the generation of such electricity through the means of steam plants by the use of coal; that the cost and expense in the up-keep and operation of said plant in the generation of electricity is constant and not subject to all the varying changes and increases of prices in the cost of coal, in the depreciation of machinery operated through the means of coal in furnishing power in said business; and plaintiff says that there is no other source of water supply available for the operation of said hydro-electric plant aside from the water obtained through said leases from the State of Ohio as aforesaid.

10. There are no other leases aside from those described above owned by plaintiff, leasing water on said eighteen mile level of said canal, and there is only one other lease granting water from said canal north of said eighteen mile level to the outlet of said canal in Swan Creek, which other lease is a renewal of one granted prior to March 12, 1895 and it grants to the Toledo Grain and Milling Company the right to take water out of the north end of said canal to the amount of 4,800 cubic feet per minute for operation of a large flouring mill belonging to said the Toledo Grain and Milling Company.

[fol. 15] 11. Plaintiff further says that on January 22, 1920, the General Assembly of Ohio passed an Act approved by the Governor of Ohio upon February 4, 1920, providing for the abandonment and sale of that part of said Miami & Erie Canal to the City of Toledo, Ohio, beginning at the outlet lock of said canal at said Swan Creek in said City of Toledo and extending westerly, including the entire width

of said canal lands a distance of 8.87 miles to a point 1.6 miles south of said water flume and hydro-electric plant and just north of the outlet lock to the Maumee side-cut so-called, leading from the said canal easterly to the Maumee River and belonging to said State of Ohio. Said Act is found in Volume 108, Part 2, Ohio Laws, pages 1138 to 1141 inclusive, and provides that upon the passage of said Act, the Governor of Ohio should appoint two disinterested freeholders of Ohio who, in conjunction with the Superintendent of Public Works of Ohio should proceed to appraise said portion of said canal thus to be sold; that said appraisers should file in writing certified copies of their appraisement when made with the Governor of Ohio and the Mayor of said City of Toledo; that said City of Toledo should have an option of either leasing or purchasing said 8.87 miles of said canal, providing the City Council of said City should within three (3) years after said appraisement signify by resolution its acceptance of such appraisement and its intention either to purchase or lease said portion of said canal in accordance with the terms of said Act; that said Act provided said portion of said canal could be purchased by said City of Toledo at its election, but that there should be excepted from said purchase and said purchase should and could only be made subject to the rights of owners of then existing leases from the State of Ohio of either lands or waters or both, and the rights of said owners to a renewal of said existing leases respectively and that when said City of Toledo should pay the purchase price for said portion of said canal, as fixed by said appraisers, the Governor was authorized by the Act to execute a deed conveying said property to said City of Toledo, but expressly excepting therefrom and subeject to the rights of owners of [fol. 16] existing leases of either lands or water or both, and the rights of said owners to a renewal of said existing leases respectively, said leases hereinabove mentioned and referred to being the only leases in force at the time of or since the passage of said Act.

Said Act further provides that in case the lessees of the State of Ohio are at any time under the terms of said Act, deprived by the City of Toledo of their water rights and privileges, the City of Toledo shall pay such lessees a fair compensation for the loss of the water to which they would

have been entitled under said leases and a renewal thereof respectively and that in case the amount of compensation cannot mutually be agreed upon by said City of Toledo and said lessees respectively, the City of Toledo shall proceed under the provisions of the General Code to condemn such rights of such lessees for the use of said municipality.

12. Plaintiff further says that the Governor of Ohio appointed said appraisers in pursuance of said Act and that said appraisers proceeded to make an inspection survey of said property; that plaintiff notified said appraisers at that time of all the facts with respect to plaintiff's water rights and privileges under its leases and the terms and conditions thereof, as hereinabove set forth and described, and that said appraisers thereafter appraised said property as subject to and encumbered by plaintiff's said rights and leases and said terms and conditions thereof at a price of Three Hundred Thousand Dollars ($300,000.00); that said appraisers thereafter filed their report in writing with the Governor of Ohio and the Mayor of said City of Toledo, showing said appraisal as aforesaid, and plaintiff thereupon notified said City of Toledo of its rights as hereinabove described under said leases; and plaintiff says that defendant, the City of Toledo, has at all times since long before the passage of said legislature act been fully aware of plaintiff's said water rights and privileges under said leases and with all of said business and property carried on, maintained and operated under and in connection with said leases and through said water rights, privileges and powers held under [fol. 17] said leases from the State of Ohio and said City of Toledo, has at all times been fully apprised of and acquainted with all the other facts and circumstances hereinabove set forth.

13. Plaintiff further says that notwithstanding said notification to said City and its knowledge of plaintiff's rights, as above set forth, said City of Toledo thereafter through its City Council and Mayor duly adopted, on September 11, 1922, a resolution approving said appraisal in the sum of Three Hundred Thousand Dollars ($300,000.00) declaring the intention of said City to purchase and acquire by deed from the State of Ohio in accordance with the terms of said Act said abondened portion of said canal as set forth

in said Act, and specifically directed the City Clerk of said City to file with the Governor of Ohio a certified copy of said resolution as notice of acceptance by said City of said appraisement and of its intention to purchase said abandoned portion of said canal as aforesaid; that thereafter said certified copy of said resolution was filed with the Governor of Ohio, said City of Toledo paid to said State Three Hundred Thousand Dollars, ($300,000.00) and received from said state a deed from the Governor deeding said property to the City of Toledo, but expressly in said deed providing that said deed was made granting said lands to said City, excepting therefrom and subject to the rights of the State's lessees, being this plaintiff and said the Toledo Grain and Milling Company, under their said leases respectively, and the rights of this plaintiff and said Milling Company to said renewal of said leases. Said deed was executed by the State of Ohio through the Governor thereof, as provided in said Act, and was delivered to the City of Toledo upon payment of said purchase price on December 28, 1922.

14. Plaintiff further says that subsequently to the execution and delivery of said deed, as aforesaid, plaintiff had a long controversy with said City of Toledo as to the right of plaintiff to compensation under its said leases and said legislative act and deed, said City of Toledo claiming and insisting that notwithstanding plaintiff's said leases and the provisions of said legislative act and said deed, as [fol. 18] hereinabove set out, plaintiff was not entitled to any compensation for the loss of its water privileges called for by said leases and protected by the provisions of said legislative act and deed as aforesaid; that thereafter in the latter part of the year 1924 and the forepart of the year 1925 said City of Toledo threatened to fill up said canal at the southerly end of that part thereof purchased by said City as aforesaid and south of said hydro-electric plant and thus cut off the water from flowing in said canal to and into said plant; that thereafter through a decree entered by the United States Circuit Court of Appeals for the Sixth Circuit in a suit instituted by plaintiff seeking an injunction against said City of Toledo and appealed to said United States Circuit Court of Appeals, said United States Circuit

Court of Appeals directed the District Court for the Northern Judicial District of Ohio, Western Division, to enter a decree against said City of Toledo, its officers, agents, appointees and employees enjoining them from doing any act or thing to prevent and from preventing in any wise the flow of the water in said canal property purchased by said City of Toledo, as aforesaid, to said hydro-electric plant, until said City of Toledo should pay plaintiff a fair compensation, fixed by mutual agreement, for the water to which it would be entitled under its said leases and a renewal thereof, or fixed by condemnation proceedings under the General Code of Ohio if a mutual agreement as to such compensation could not be reached, said United States Circuit Court of Appeals holding that under and in pursuance of said Act of the General Assembly of Ohio passed January 22, 1920 the acceptance of the terms and provisions thereof by the City of Toledo, with the payment of said purchase price and the delivery of said deed with its said terms and conditions set out as aforesaid, the State of Ohio and said City of Toledo had entered into a contract for the benefit of plaintiff providing that plaintiff should not and would not be deprived of its said water rights and privileges under the terms of said legislative act until said City of Toledo should have paid plaintiff therefor as aforesaid.

[fol. 19] Plaintiff further says that said City of Toledo desires to take the water out of said canal, but has continually refused and still refuses to pay plaintiff any compensation for the loss of the water and water privileges to which it is entitled under its said leases. On the contrary, plaintiff says that said City of Toledo, through its officers, agents and employees, and said defendants, the Commissioners of Lucas County and the Villages of Maumee and Waterville, conspired together and urged the General Assembly of Ohio at the last Session of that Assembly to pass the law hereinafter in the next paragraph of this complaint referred to and described, through which law, if complied with, the water would be taken out of said canal by the defendants in this suit, or some of them, at a point or points south of said property purchased as aforesaid by said City of Toledo and plaintiff would thereby be deprived of the water and water rights and privileges called for by its said leases and this without any compensation therefor,

and said water rights and privileges would be wholly and irreparably injured and destroyed.

15. Plaintiff further says that in pursuance of the action of said City of Toledo and said defendants, the Commissioners of Lucas County, Ohio, and said Villages of Maumee and Waterville, but over the protest of plaintiff and said defendant Schlessinger and his appointees and employees in charge of the Department of Public Works of the State and over the protest and veto of the Governor thereof, the General Assembly of Ohio passed an Act on May 11, 1927 entitled "An act to abandon a portion of the Miami and Erie Canal in Lucas County, Ohio, and to devote the same to highway and other purposes and to repeal all acts in conflict therewith," said Act being amended Senate Bill No. 48, and which will become effective and be in force on August 10, 1927. Said Act provides that the portion of said canal in Lucas County, Ohio, commencing at a point just below the head of the Maumee side-cut so-called, near Maumee, Ohio, and running thence southwesterly over and along said Miami and Erie Canal, including the full width of the bed and banks thereof as defined by Buchanan's sur-
[fol. 20] vey to a point where said canal joins with the Maumee River on the northwesterly side thereof in Providence Township, Lucas County, Ohio, and above said Grand Rapids Dam, should be abandoned both for canal and hydraulic purposes. Said Act further provides that all leases heretofore granted to any person, firm or corporation for canal or hydraulic purposes on that part of the Miami and Erie Canal described as aforesaid, shall become and be null and void after sixty (60) days from the taking effect of this Act and said Act authorizes and specifically directs the Director of Highways of the State of Ohio to, and commands that he shall within sixty (60) days from the taking effect of this Act, drain the water out of said abandoned portion of said canal described above herein and prevent the water of the Maumee River from flowing into or through said abandoned part of said canal. Said Act also authorizes the Commissioners of Lucas County and said defendant municipalities to drain the water from said abandoned portion of said canal, fill up said canal at points of roads and street crossings over the same and to prevent the water from said Maumee River from flowing into or through said abandoned part of said canal.

Said Act makes no provision whatever for the protection of plaintiff in the enjoyment of its rights and privileges under its said leases nor does it make any provision whatever for compensation to plaintiff in case defendants or any of them, shall drain the water from said canal or prevent in any way the water from flowing into and through said canal to said hydro-electric plant or elsewhere under plaintiff's said leases or otherwise.

Said Act repealed an Act passed by the General Assembly of the State of Ohio on April 17, 1925 which latter Act is found on pages 367 to 370 inclusive of Volume 111 of the Laws of Ohio, and gave to the Board of County Commissioners of Lucas County an option to buy the same property covered by said Act passed at the last Session of said General Assembly, upon an appraisal to be made by two disinterested freeholders appointed by the Governor to act [fol. 21] in that behalf with the Superintendent of Public Works. The Governor appointed said appraisers and they, in conjunction with said Superintendent of Public Works, appraised said property at the sum of Seven Hundred Seventy-five Thousand Dollars, ($775,000.00). Said Act further provided that if said County Commissioners should elect to take said property then before the water could be taken out of said canal, said Commissioners should compensate plaintiff for the loss of its rights and privileges under its said leases, paying it a fair compensation therefor to be arrived at by mutual agreement, and if the amount thereof could not be fixed by mutual agreement, then that said County Commissioners should condemn said rights under the General Code of Ohio for the said County. Said County Commissioners have refused to exercise the option given by the State of Ohio to purchase said property as aforesaid.

16. Plaintiff further says that there is no other place on said Miami and Erie Canal at which it can exercise or avail itself of the rights and privileges granted it under its said leases except on and from said eighteen mile level of said canal, but plaintiff says that if it shall be allowed to avail itself of its rights and privileges granted it under said leases, it will be able to use them throughout the time said leases have yet to run respectively and throughout any renewals thereof, at said point where said rights and privi-

leges are now being enjoyed and that thereunder plaintiff will realize great financial benefit and profit therefrom; that notwithstanding that fact and notwithstanding the long time yet to run of plaintiff's said leases hereinabove described, entitling it to take water from said canal, as provided for therein, during the life of said leases and during the life of *said leases and during the life of* a renewal thereof respectively, and notwithstanding that the State of Ohio under said Act of January 22, 1920 entered into said contract with the City of Toledo for the benefit of plaintiff, providing that if the water should be taken out of said canal and plaintiff should be deprived of its water privileges because thereof, plaintiff should be compensated for its [fol. 22] loss in that behalf, as hereinabove stated, nevertheless said General Assembly passed said Act hereinabove described as Senate Bill No. 48, attempting arbitrarily and without making any provision for compensation to be paid to plaintiff for its rights and privileges under its said leases, to declare said leases null, void and of no effect without any fault and not because of any default upon the part of plaintiff in compliance with the terms of said leases, but solely and only for the purpose of confiscating plaintiff's said rights and privileges to the very great damage of plaintiff in the amount of the value of said rights and privileges hereinabove set out; and plaintiff says that said defendant, George F. Schlessinger, Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio, in pursuance of the direction and commands of said Act, Senate Bill No. 48, is threatening to and unless restrained by this court, will proceed immediately upon the taking effect of said Act on August 10, 1927, to drain the water out of said eighteen mile level of said canal and prevent any water from flowing therein for the use of plaintiff under its said leases, and thus take away from plaintiff all of said water called for by said leases and totally deprive plaintiff of the same without compensating or paying plaintiff in any wise for its great loss in that behalf and without making any provision in any wise for a continuance of the flow of said water nor any part thereof in said canal for the use of plaintiff; and said other defendants, County Commissioners and the Villages of Maumee and Waterville, are threatening to, and

unless restrained by this court will proceed to fill up said canal as authorized in said Act, Senate Bill No. 48, and thus take away from plaintiff all of said water called for by its said leases and totally deprive plaintiff of the same without compensating plaintiff in any wise for the loss of such water and the rights and privileges with respect to the same granted to it under its said leases and without making any provision in any wise for continuance of the flow of said [fol. 23] water, nor any part thereof, in said canal for the use of plaintiff.

17. Plaintiff further says that if defendants shall be allowed to take such action, as hereinabove described, plaintiff's rights and privileges under said leases of the very great value as hereinabove alleged, will be arbitrarily taken away from it, totally destroyed, ruined and confiscated, and plaintiff will be through such action on the part of defendants, deprived of its property without compensation and without due process of law and wholly in violation of its said leasing contracts and in violation of said contract made in its behalf between said State of Ohio and said City of Toledo, as hereinabove set forth and described, and all this in controvention of and contrary to Section 10 of Article I of the Constitution of the United States as impairing the obligations of each and all of said leasing contracts and said contract made in behalf and for the benefit of plaintiff by the State of Ohio with said City of Toledo, and in controvention of and contrary to Section 1 of Article XIV of the Amendments to the Constitution of the United States, as depriving plaintiff of its said property without due process of law, and as denying it the equal protection of the law.

Plaintiff further says that during the year 1911 to and including the year 1925 there was generated through the use of said water power under said leases an average of approximately seven and three-quarter million kilo-watt-hours of electricity per year and during the year 1926 there was generated in the same way something over nine million kilowatt-hours of electricity, all of which throughout said years was sold to the public at prices far below what it could have been sold for had it been generated by means of steam power.

Wherefore plaintiff prays that said defendants, and each of them, and all of their officers, agents, appointees and employees respectively, may be temporarily restrained from draining any part of the water out of any part of said eighteen mile level of said canal and from preventing or in any wise interfering with the entering of water from said [fol. 24] Maumee River into and flowing northeasterly through said canal to said water flume and hydro-electric plant; and from in any wise by any means obstructing the flow of said water in any part of said canal which would prevent the same from flowing to said water flume and said hydro-electric plant; that said temporary restraining order may remain in force until the hearing and determination of plaintiff's application herein made for an interlocutory injunction against defendants enjoining them as herein prayed; and plaintiff hereby applies and prays for an interlocutory injunction against each of said defendants, enjoining them respectively to the same extent and in the same manner as hereinabove prayed for as to said temporary restraining order, and plaintiff prays that upon final hearing said injunction may be made perpetual, and it prays for all proper and equitable relief.

Henderson & Burr, U. G. Denman, Solicitors for Plaintiff.

Duly sworn to by Frank E. Miller. Jurat omitted in printing.

[fol. 25] In United States District Court

[Title omitted]

Præcipe for Summons

To the Clerk of said Court:

Please issue subpœna for the defendant, George F. Schlesinger as Superintendent of Public Works and Director of the Department of Highways and Public Works of Ohio, residing in Columbus, Franklin County, Ohio, and issue duplicate writs to the defendants Roy E. Davis, Ralph E. Farnsworth and George R. Hoffman, as County Commissioners of Lucas County, Ohio, and to the Villages of Man-

mee and Waterville and the City of Toledo in said Lucas County, Ohio, said defendant Commissioners and Villages and City being residents of the Northern United States Judicial District of Ohio, Western Division, and with said writs issue copies of temporary restraining order.

Dated July 29th, 1927.

Henderson & Burr, U. G. Denman, Solicitors for Plaintiff.

[fol. 26] In United States District Court

[Title omitted]

Temporary Restraining Order—Filed July 29, 1927

This cause came on for hearing on the application of the plaintiff for a temporary restraining order and it appearing to the court from specific facts shown by the verified bill that immediate and irreparable injury, loss and damage will result to the plaintiff, applicant, before notice can be served and hearing had on this application on the taking effect of an act passed by the General Assembly of Ohio and described in paragraph 15 of the verified bill, that is to say, it appearing from the verified bill that the plaintiff is in the exercise of and operating valuable water rights and privileges under leases from the State of Ohio permitting it to take water from the Miami and Erie Canal at Maumee, Ohio, to operate a hydro-electric plant there situated for the purpose of generating electricity to supply the public with electricity for light, heat and power purposes, and that defendants are claiming the right to fill up said [fol. 27] canal, or shut the water out of the same from the Maumee River at the point where said canal joins said Maumee River above the Grand Rapids State Dam at Grand Rapids, Ohio, or to drain all the water out of said canal at the Maumee side-cut, so-called, and south of said hydro-electric plant, as alleged in the verified bill (either of which last two alternatives could be accomplished within an exceedingly short space of time) and thus shut off the water of said canal from its flow to said hydro-electric plant and thereby prevent the operation of said plant and also prevent the generation of electricity therein and therefrom by

means of said water used in the operation of said plant, and thereby deprive plaintiff of all its water rights and privileges under said leases and wholly destroy the same, and confiscate plaintiff's said property and deprive it of the same without compensation and without due process of law, and it appearing further from said vertified bill that said defendants have threatened and are threatening to proceed and will, unless restrained by this court, proceed to shut off the flow of said water, as aforesaid, with the results aforesaid, and all this without compensating plaintiff in any wise for its said claimed rights and privileges in said water and said canal and without giving plaintiff an opportunity to prove and show its rights and property in said water, as aforesaid, through any court of competent jurisdiction, or other due process of law, and it appearing further from said verified bill that said hydro-electric plant has been constructed at a large cost and expense for the purposes aforesaid, and that said claimed water rights, if valid, are of great value, that if defendants shall proceed to carry out and should carry out their said threats, as aforesaid, plaintiff's said rights will destroyed and great and irreparable injury, damage and loss will come to plaintiff by reason thereof;

[fol. 28] And it appearing that plaintiff is making application for an interlocutory injunction suspending and restraining the enforcement, operation and execution of a Statute of the State of Ohio, by restraining the action of the defendants in the enforcement or execution of such Statute on the claimed ground that said Statute is contrary to and in contravention of the Constitution of the United States;

Now, therefore, it is hereby ordered that, effective as of the effective date of said Act of the General Assembly of Ohio, the defendants and each of them and all of their officers, agents, associations, appointees and employees, respectively, be and they hereby are temporarily restrained from in any way preventing, interrupting, lessening, interfering with or otherwise abridging or injuriously affecting (a) the use by the plaintiff of any and all of the canal water of that portion of the Miami and Erie Canal extending from the State dam and the intake adjacent thereto, located in

the Maumee River immediately south of Grand Rapids, Ohio, to said hydro-electric plant and property located at Maumee, Ohio; (b) the flowage of water from said river into said canal at said dam and intake; (c) from diverting, causing or permitting to be diverted, either into said river or otherwise and either at the said Maumee Side Cut or elsewhere, any of the water of said canal which, without such diversion would and will be available to the plaintiff in said canal at said hydro-electric plant and property; (d) from opening or causing or permitting to be opened, whether wholly or partially, the sluice gate located at or in the Maumee Side Cut in the vicinity of the south corporation line of the municipality of Maumee, Ohio, or any other sluice gate or passage, the opening of which would or will injuriously affect either the volume or flowage of water in said portion of said canal extending between the points first aforesaid; (e) from closing or obstructing, whether wholly or partially, any gate or passage now available or [fol. 29] used for the conveyance of water from said river into said portion of said canal; (f) from constructing or erecting and from causing or permitting to be constructed or erected, any bulkhead, dam or other structure or obstruction the purpose or result of which would be to prevent or lessen the flow of water in any part of said portion of said canal; and from doing, suffering or permitting any other act or thing in any way violative of the rights of the plaintiff secured to it under and by virtue of the leases, agreement and supplementary lease executed by the Board of Public Works of the State of Ohio and now owned by the plaintiff, covering the right to use the waters of said portion of said canal, all until the hearing and determination of the application for an interlocutory injunction, as prayed for in the verified bill, or until the further order of this court. And because of said threats and declarations of defendants that they intend to and will fill said canal, obstruct said flow of water as aforesaid, or drain said water from said canal, and the short space of time within which such threats and declarations could be carried out, this temporary restraining order is granted without notice, this 29th day of July, 1927, at 11:50 A. M.

It is further ordered that this temporary restraining order shall take effect upon the giving by the plaintiff of a

bond in the sum of $5,000.00 executed by sufficient surety to be approved by the Clerk of this Court, conditioned to secure the defendants the damages they may sustain if it be finally decided that said temporary restraining order ought not to have been granted.

And thereupon the plaintiff tendered to the said Clerk of this Court its bond in said sum executed by The Metropolitan Casualty Insurance Company of New York, as surety, and the same was duly approved by the Court.

Benson W. Hough, District Judge.

[fols. 30-32] Bond on injunction for $5,000, approved and filed July 29, 1927, omitted in printing.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—Filed Aug. 19, 1927

This cause came on for hearing on this 19 day of August, 1927, at 10 o'clock A. M. on the application of the plaintiff for an order extending the temporary restraining order heretofore granted herein and effective with the beginning of the 10th day of August, 1927, and for good cause shown, it appearing that under the laws of the United States it is required that the application made by plaintiff in said cause for an interlocutory injunction must be heard by three judges of the United States, as provided in said laws, and that such three judges cannot be called at this time for such hearing, it is ordered that said temporary restraining order heretofore granted herein, as aforesaid, be and the same hereby is extended to and including the 29th day of August, 1927.

Dated this 19 day of August, 1927, at 10 o'clock A. M.

Benson W. Hough, District Judge.

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—Filed Aug. 29, 1927

This cause came on for hearing on this 29 day of August, 1927, at 10 o'clock A. M. on the application of the plaintiff for an order extending the temporary restraining order heretofore granted herein and effective with the beginning of the 10th day of August, 1927, and for good cause shown, it appearing that under the laws of the United States it is required that the application made by plaintiff in said cause for an interlocutory injunction must be heard by three judges of the United States, as provided in said laws, and that such three judges cannot be called at this time for such hearing, it is ordered that said temporary restraining order heretofore granted herein, as aforesaid, be and the same hereby is extended to and including the 29th day of August, 1927.

Dated this 29th day of August, 1927, at 10 o'clock A. M.

Benson W. Hough, District Judge.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—Filed Sep. 8, 1927

This cause came on for hearing on this 8th day of August, 1927, at 10 o'clock A. M. on the application of the plaintiff for an order extending the temporary restraining order heretofore granted herein and effective with the beginning of the 10th day of August, 1927, and for good cause shown, it appearing that under the laws of the United States it is required that the application made by plaintiff in said cause for an interlocutory injunction must be heard by three judges of the United States, as provided in said laws, and that such three judges cannot be called at this

time for such hearing, it is ordered that said temporary restraining order heretofore granted herein, as aforesaid, be and the same hereby is extended to and including the 29th day of August, 1927.

Dated this 8 day of August, 1927, at 10 o'clock A. M.

Benson W. Hough, District Judge.

[fol. 36] In United States District Court

[Title omitted]

Order Extending Temporary Restraining Order—Filed Sep. 17, 1927

This cause came on for hearing on this 17th day of August, 1927, at 10 o'clock A. M. on the application of the plaintiff for an order extending the temporary restraining order heretofore granted herein and effective with the beginning of the 10th day of August, 1927, and for good cause shown, it appearing that under the laws of the United States it is required that the application made by plaintiff in said cause for an interlocutory injunction must be heard by three judges of the United States, as provided in said laws, and that such three judges cannot be called at this time for such hearing, it is ordered that said temporary restraining order heretofore granted herein, as aforesaid, be and the same hereby is extended to and including the 29th day of August, 1927.

Dated this 17th day of August, 1927, at 10 o'clock A. M.

Benson W. Hough, District Judge.

[fol. 37] In United States District Court

[Title omitted]

Answer of George F. Schieslinger, as Superintendent of Public Works and Director of Public Highways and Public Works of the State of Ohio—Filed April 14, 1928

Now comes the defendant, George F. Schlesinger, as Superintendent of Public Works and Director of the Depart-

ment of Highways and Public Works of the State of Ohio and for answer to the bill of complaint of the plaintiff, represents as follows:

1. This answering defendant admits the allegations of subdivision 1 of the bill of complaint of the plaintiff herein.

2. This answering defendant admits the allegations of subdivision 2 of the bill of complaint of the plaintiff herein.

3. This answering defendant denies that "The State of Ohio constructed said canal for the purpose of supplying water for hydraulic purposes and uses in the operation of industrial plants, hydro-electric plants and other industrial enterprises"; and further denies that "the laws of the State of Ohio authorized the Board of Canal Commissioners to locate, construct and put in operation the Miami and Erie Canal for the purpose of supplying water for hydraulic power." This answering defendant admits the allegations of subdivision 3 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

[fol. 28] 4. By way of answer to the allegations of subdivision 4 of the bill of complaint of the plaintiff herein, this answering defendant denies the allegation as to the legal effect of the acts of the Legislature therein referred to and the terms of any leases therein referred to, said defendant referring to the terms of said acts and the terms of said leases as to the legal effect thereof, and further denies that "said canal has been operated for the purpose of supplying water for hydraulic power to industrial plants, hydro-electric plants and other industrial purposes"; and further denies that the plaintiff, relying upon the long and constant use and practice followed by the State of Ohio in granting leases of water from said canal as aforesaid, became the owner of the lease therein mentioned, granted by the State of Ohio to Robert J. Law as Trustee, on March 12, 1895; and further denies that "the State of Ohio has realized a great amount of income" from such leases; and further denies that "said lease has become renewed and vests in the plaintiff for the renewal period of thirty years from March 12, 1925." This answering defendant admits the allegations of subdivision 4 of the bill of complaint of

the plaintiff herein except such as are hereinbefore specifically denied.

5. By way of answer to the allegations of subdivision 5, this answering defendant denies the allegation that "on the acquirement of said lease for carrying on its business of generating electricity for light, heat and power purposes by water power, it acquired land as therein alleged"; and further denies that the "hydro-electric plant was erected and installed at great expense"; and further denies that "a large water flume was installed by the plaintiff at great expense." This answering defendant admits the allegations of subdivision 5 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

6. This answering defendant admits the allegations of subdivision 6 of the bill of complaint of the plaintiff herein.

7. By way of answer to the allegations of subdivision 7 of the bill of complaint of the plaintiff herein, this answer-[fol. 39] ing defendant denies the allegation that the plaintiff purchased the four leases therein mentioned, relying upon the policy declared by the State of Ohio, as set forth in the bill of complaint, and upon any policy, custom or practice followed by the State of Ohio in granting leases of water from said canal to water users for hydro-electric or other industrial purposes; and further denies that any of said leases require water to be delivered to the plaintiff at Maumee, Ohio; and further denies the allegations as to the legal effect of the leases therein referred to, this answering defendant referring to the terms of said leases for the provisions thereof; and further denies that the supplementary lease referred to in paragraph "C" of said subdivision of the bill of complaint of the plaintiff herein, was granted for the purpose of enabling the state to give satisfactory and adequate service to the plaintiff and to increase the flow of said canal between said state dam and said hydro-electric plant and to increase the revenue of the State of Ohio from said lease; and further denies that "the plaintiff expended the sum of Fifty-three Thousand Dollars in the removal of rock bars and the excavation, deepening and widening of said canal. This answering defendant admits the allega-

tions of subdivision 7 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

8. By way of answer to the allegations of subdivision 8 of the bill of complaint of the plaintiff herein, this defendant denies the allegation that the plaintiff "elected to take a renewal of said Robert J. Law, Trustee, lease, as above stated" and "also elected to take a renewal of each of said other leases, including said supplementary lease; and that "said supplementary lease was renewed with said Law lease"; and that plaintiff "has in all respects fully complied with all the terms and conditions to be complied with in said leases" and "has fully done and performed all things required of it by said leases respectively to be done and performed." This answering defendant admits the allegations of subdivision 8 of the bill of complaint of the plaintiff herein, except such as are hereinbefore specifically denied.

[fol. 40] 9. By way of answer to the allegations of subdivision 9 of the bill of complaint of the plaintiff herein, this answering defendant denies the allegation that "relying upon the long established policy, custom and constant practice followed by the State of Ohio in granting leases of water from said canal to water users for hydraulic and hydro-electric and other industrial purposes, as described above herein, and relying upon the declaration by the State of Ohio that the said Miami and Erie Canal, together with its water supply, reservoirs, dams, feeders and adjacent lands from Cincinnati to Toledo should be maintained and retained as a public canal and this even though it was known by the state and the public that navigation on said canal could not be revived, plaintiff greatly increased the capacity of said hydro-electric plant as aforesaid" and further denies that "said hydro-electric plant, including the land, buildings and equipment thereon, is of a value of not less than Three Hundred Thousand Dollars, used in connection with said water rights and that said leases and the water rights secured thereunder are of very great value, namely, a minimum value of Four Hundred Fifty Thousand Dollars." This answering defendant admits the allegations of subdivision 9 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

10. This answering defendant admits the allegations of subdivision 10 of the bill of complaint of the plaintiff herein.

11. This answering defendant admits all of the allegations of subdivision 11 of the bill of complaint of the plaintiff herein except those as to the legal effect of the act of the General Assembly therein referred to, and hereby refers to the terms and conditions of said act as to the legal effect thereof.

12. By way of answer to the allegations of subdivision 12 of the bill of complaint of the plaintiff herein, this answering defendant denies that "plaintiff thereupon notified said city of Toledo as to its rights herein above described under said leases"; and further denies that "the defendant, the City of Toledo has at all times since long before the passage of said legislative act, been fully aware of said water rights and privileges under said leases and with all of said business and property carried on, maintained and operated [fol. 41] under and in connection with said leases and through said water rights, privileges and powers held under said leases from the State of Ohio" and that "said City of Toledo has at all times been fully apprised of and acquainted with all the other facts and circumstances" thereinbefore in said bill of complaint set out. This answering defendant admits the allegations of subdivision 12 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

13. By way of answer to the allegations of subdivision 13, this answering defendant denies the allegations as to the legal effect of the deed therein described and reference is made to said deed as to the legal effect of the terms and provisions thereof. This answering defendant admits the allegations of subdivision 13 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

14. By way of answer to the allegations of subdivision 14 of the bill of complaint of the plaintiff herein, this answering defendant denies the allegations as to the effect of the decision and judgment of the United States Circuit Court of Appeals therein referred to and denies the effect of said

judgment and decision as set forth in said subdivision 14 and refers to said decision and judgment as to the effect thereof; and further denies that the "said City of Toledo, through its officers, agents and empioyes, and said defendants, the commissioners of Lucas County and the Villages of Maumee and Waterville, conspired together "for the purpose of accomplishing any of the things set out in said subdivision 14. This answering defendant admits the allegations of subdivision 14 of the bill of complaint of the plaintiff herein, except those hereinbefore specifically denied.

15. By way of answer to the allegations of subdivision 15 of the bill of complaint of the plaintiff herein, this answering defendant denies the allegation that "in pursuance of the action of said City of Toledo and said defendants, the commissioners of Lucas County, Ohio, and said villages of Maumee and Waterville • • • the General Assembly [fol. 42] of Ohio passed" the act described in said subdivision 15. This answering defendant admits the allegations of subdivision 15 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

16. By way of answer to the allegations of subdivision 16 of the bill of complaint of the plaintiff herein, this answering defendant admits that there is no other place on the Miami and Erie Canal on which plaintiff can exercise or avail itself of the acts and privileges granted to it under said lease except on said eighteen mile level, and admits that the plaintiff will realize financial benefit and profit by the continued use of the water taken from said canal. This answering defendant denies that the plaintiff is longer entitled to take water from said canal; and further denies that by virtue of said act of abandonment of 1927, plaintiff is deprived of any right or privilege; and further denies that plaintiff should be compensated on account of any loss it may sustain by virtue of the provisions of said act; and further denies that there is any confiscation of plaintiff's rights or privileges. This answering defendant admits that the defendant, George F. Schlesinger, Superintendent of Public Works and Director of the Department of Public Highways and Public Works of the State of Ohio, in pur-

suance of the terms of the act referred to in said subdivision of said bill of complaint, is threatening to and unless restrained by this court will immediately drain the water out of said eighteen mile level and prevent water from flowing into said canal, but denies that any such act of said defendant will take away any rights or privileges of the plaintiff. This answering defendant admits the allegations of subdivision 16 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

17. By way of answer to the allegations of subdivision 17 of the bill of complaint of the plaintiff herein, this answering defendant denies the allegation that any rights of the plaintiff will be destroyed, ruined or confiscated by any action to be taken by any of the defendants herein; and further denies that any such action on the part of this de- [fol. 43] fendant will be the taking of any of plaintiff's property without compensation and without due process of law; and further denies that any such taking will be in violation of any of said leases or in violation of any contract between the State of Ohio and the City of Toledo; and further denies that any such action will be in contravention or contrary to section 10 of Article I of the Constitution of the United States, or will impair the obligation of any contract or agreement, or will be in contravention of or contrary to section 1 of Article XIV of the Amendments to the Constitution of the United States; and further denies that any such action will be denying to the plaintiff the equal protection of the law.

Further answering the allegations of said subdivision 17, this answering defendant admits the allegations that the plaintiff has generated by the use of water power obtained by it by water therein, pursuant to the terms of said leases from 1911 to 1925, a large amount of electricity, but denies that said electricity has been sold to the public for less than the price for which it could have been sold had it been generated by steam power. This answering defendant is not advised as to the quantity of electricity which has been manufactured by the plaintiff during said period and therefore denies the allegations thereof. This answering defendant admits the allegations of subdivision 17 of the bill of complaint of the plaintiff herein except such as are hereinbefore specifically denied.

18. This answering defendant says that the Law lease, referred to in subdivision 4 of the Bill of Complaint, the supplementary Law lease, the Tryon lease, and the Maumee Paper Company lease, referred to in subdivision 7 of the Bill of Complaint, provide for the use of water for hydraulic power from points northeast of the portion of said canal abandoned by the 1927 Act of the Ohio General Assembly and are not directly affected by the terms of said Abandonment Act.

19. This answering defendant further says that the plaintiff does not now, and never has since the acquirement of any of said leases, taken any water from that portion of the Miami and Erie Canal abandoned by said Act of 1927, pursuant to said Law lease, supplementary Law lease, [fol. 44] Tryon lease, Detwiler lease, Maumee Paper Company lease, and Thomas W. Studer lease, referred to in the Bill of Complaint. That said plaintiff is using water from said canal at a point approximately three and one-half miles northeast from the portion of said canal abandoned as aforesaid; that the plaintiff's use of the water at such points for hydraulic power is now, and was at all times mentioned in the Bill of Complaint, subject to the rights of the State of Ohio, to the abandonment of the canal at its source, to wit, at Grand Rapids, Ohio.

Wherefore this answering defendant prays that the Bill of Complaint of plaintiff be dismissed at plaintiff's costs.

Edward C. Turner, Attorney General of Ohio. A. M. Calland and J. A. Godown, Solicitors.

Duly sworn to by George P Schlesinger. Jurat omitted in printing.

[fol. 45] In United States District Court

[Title omitted]

Answer of the City of Toledo—Filed Feb. 3, 1928

Now comes the defendant the City of Toledo, a municipal corporation duly organized and existing under the laws of

the State of Ohio, and for answer to the Bill of Complaint of the plaintiff, represents as follows:

1. This answering defendant admits the allegations of subdivision 1.

2. This answering defendant admits the allegations of subdivision 2.

3. By way of answer to the allegations of subdivision 3, this answering defendant denies that, "the State of Ohio constructed said canal for the purpose of supplying water for hydraulic purposes and uses in the operation of industrial plants, hydro-electric plants and other industrial enterprises"; and further denies that "the laws of the State of Ohio authorized the Board of Canal Commissioners to locate, construct and put in operation the Miami and Erie Canal for the purpose of supplying water for hydraulic power." This answering defendant admits the allegations of subdivision 3, except such as are hereinbefore denied.

4. By way of answer to the allegations of subdivision 4, this answering defendant denies the allegations as to the legal effect of acts of the legislature therein referred to and the terms of any leases therein referred to, said de- [fol. 46] fendant referring to the terms of said acts and the terms of said leases as to the legal effect thereof; and further denies that "said canal has been operatel for the purpose of supplying water for hydraulic power to industrial plants, hydro-electric plants and other industrial purposes"; and further denies that "the State of Ohio has entered into a great number of leasing contracts"; and further denies that "the plaintiff, relying upon the laws and constant use and practice followed by the State of Ohio in granting leases of water from said canal, as aforesaid, became the owner of the lease therein mentioned, granted by the State of Ohio to Robert J. Law, Trustee, on March 12, 1895"; and further denies that "the State of Ohio has realized a great amount of income from any such leases"; and further denies that "rentals provided for in said leases have always been paid by plaintiff"; and further denies that "said lease has become renewed and vests in the plaintiff for the renewal period of thirty (30) years from March 12, 1925"; and further denies that "plaintiff

has at all times since the acquirement by it of said lease complied with the terms and conditions thereof and has kept said canal and all parts thereof in good order and repair at its own cost and expense and without any expense to the State of Ohio"; and further denies the allegations contained in the last paragraph of subdivision 4. This answering defendant admits the allegations of subdivision 4, except such as are hereinbefore denied.

5. By way of answer to the allegations of subdivision 5, this answering defendant denies the allegation that "on the acquirement of said lease for carrying on its business of generating electricity for light, heat and power purposes by water power, it acquired land as therein alleged"; and further denies that the "hydro-electric plant was erected and installed at great expense"; and further denies that "a large water flume was installed by the plaintiff at great expense"; and further denies that "there was any water 'called for' by said lease to be furnished to plaintiff by the State of Ohio." This answering defendant admits the allegations of subdivision 5, except such as are hereinfore denied.

6. This answering defendant admits the allegations of subdivision 6.

[fol. 47] 7. By way of answer to the allegations of subdivision 7, this answering defendant denies the allegation that "the plaintiff purchased the four (4) leases therein mentioned, relying upon the policy declared by the State of Ohio, as set forth in the Bill of Complaint, and upon any long established policy, custom or practice followed by the State of Ohio in granting leases of water from said canal to water users for hydro-electric or other industrial purposes"; and further denies that "any leases required water to be delivered to the plaintiff at Maumee, Ohio"; and further denies the allegations as to the legal effect of the leases therein referred to, this answering defendant referring to the terms of said leases for the provisions thereof; and further denies that "the supplementary lease referred to in paragraph marked 'C' of said subdivision was granted for the purpose of enabling the State to give satisfactory and adequate service to the plaintiff and to

increase the flow of said canal between said State Dam and said hydro-electric plant, and to increase the revenues of the State of Ohio from said lease"; and further denies that "the plaintiff expended the sum of Fifty-three Thousand Dollars ($53,000.00) in the removal of rock bars and the excavation, deepening and widening of said canal." This answering defendant admits the allegations of subdivision 7, except such as are hereinbefore denied.

8. By way of answer to the allegations of subdivision 8, this answering defendant denies the allegations that "the plaintiff elected to take a renewal of each of said leases, including said supplementary lease"; and further denies that "the said supplementary lease was renewed with said Law lease"; and further denies that "the plaintiff has paid and is still paying rentals to the State of Ohio in accordance with each and all of said leases"; and further denies that "plaintiff has fully complied with each and all of the terms and conditions and has fully done and performed the things by it to be done and performed by said lease, including the upkeep, maintenance, repair and improvement of said canal and all equipment and facilities connected therewith and used in the operation of the same, from the point where said canal connects with the Maumee River above said Grand Rapids State dam northeasterly to said Lock No. 45." This answering defendant admits [fol. 48] the allegations of subdivision 8, except such as are hereinbefore denied.

9. By way of answer to the allegations of subdivision 9, this answering defendant denies the allegation that "the plaintiff increased the capacity of said hydro-electric plant in reliance upon the long established policy, custom and practice followed by the State of Ohio in granting leases of water from said canal, or in reliance upon the declaration by the State of Ohio that said Miami and Erie Canal and its water supplies, reservoirs, dams, feeders and adjacent lands from Cincinnati to Toledo should be retained and maintained as a public canal"; and further denies that "said auxiliary steam plant was installed and has been maintained for the purpose of assisting the water plant in generating electricity"; and further denies that "electricity is being sold to the public for light, heat and power

purposes"; and further denies that "said hydro-electric plant, including the land, building and equipment, is of the value of Three Hundred Thousand Dollars ($300,000.00) or more"; and further denies that "said leases and water rights are of a minimum value of Four Hundred and Fifty Thousand Dollars ($450,000.00)." This answering defendant admits the allegations of subdivision 9, except such as are hereinbefore denied.

10. This answering defendant admits the allegations of subdivision 10.

11. This answering defendant admits all of the allegations of subdivision 11, excepting as to the legal effect of the Act of the General Assembly therein referred to, and hereby refers to the terms and conditions of said Act as to the legal effect thereof.

12. By way of answer to the allegations of subdivision 12, this answering defendant denies that "plaintiff notified the City of Toledo of its rights under said leases" as therein alleged; and further denies that "the defendant the City of Toledo has at all times since the passage of said Act been aware of plaintiff's water rights and privileges." This answering defendant admits the allegations of subdivision 12, except such as are hereinbefore denied.

13. By way of answer to the allegations of subdivision 13, [fol. 49] this answering defendant denies the allegations as to the legal effect of said deed, therein mentioned, and reference is made to said deed as to the legal effect of the terms and provisions thereof. This answering defendant denies that the deed therein referred to provided that the plaintiff and the Milling Company had any rights under said leases to renewals thereof.

14. By way of answer to the allegations of subdivision 14, this answering defendant denies the allegations as to the effect of the decision and judgment of the United States Circuit Court of Appeals, therein referred to, and denies the effect of said decision and judgment as set forth in said subdivision, and refers to the said decision and judgment as to the effect thereof; and further denies that the defendants, "The City of Toledo, Ohio, or the Commissioners of Lucas County, Ohio, or the Villages of Maumee, Ohio, and Water-

ville, Ohio, entered into any conspiracy in relation to the passage of said Act of the General Assembly" as alleged in said subdivision. This answering defendant admits the allegations of subdivision 14, except those hereinbefore denied.

15. By way of answer to the allegations of subdivision 15, this answering defendant denies the allegation that "the Act of the General Assembly therein referred to was passed in pursuance of the action of the defendants, the City of Toledo, the Commissioners of Lucas County, Ohio, and the Villages of Maumee and Waterville, Ohio"; and this answering defendant admits the allegations of subdivision 15, except such as are hereinbefore denied.

16. By way of answer to the allegations of subdivision 16, this answering defendant admits, as alleged in subdivision 16, that there is no other place on the Miami and Erie Canal on which plaintiff can exercise or avail itself of the acts and privileges granted to it under said lease, except on said 18 mile level, and admits that "the plaintiff will realize financial benefit and profit by the continued use of water taken from said canal." This answering defendant denies that "the plaintiff is longer entitled to take water from said canal"; and further denies that "by virtue of said Act of Abandonment of 1927, plaintiff is deprived of any right or privilege"; and further denies that "plaintiff should be [fol. 50] compensated on account of any loss it may sustain by virtue of the provisions of said Act"; and further denies that "there is any confiscation of plaintiff's rights or privileges." This answering defendant admits, as alleged in subdivision 16, that "the defendant George F. Schlesinger, as Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio, in pursuance of the terms of the Act referred to in said subdivision 15, is threatening to, and unless restrained by this Court will, immediately drain the water out of said 18 mile level and prevent water from flowing into said canal," but denies that any such acts of said defendant will take away any rights or privileges of the plaintiff. This answering defendant admits the allegations of subdivision 16, except such as are hereinbefore denied.

17. By way of answer to the allegations of subdivision 17, this answering defendant denies the allegation that "any

rights of the plaintiff will be destroyed, ruined or confiscated by any action to be taken by any of the defendants herein"; and further denies that "any such action on the part of these defendants will be the taking of any of plaintiff's property without compensation and without due process of law"; and further denies that "any such taking will be in violation of any of said leases or in violation of any contract between the State of Ohio and the City of Toledo"; and further denies that "any such action will be incontravention of or contrary to Section 10 of Article I of the Constitution of the United States, or will impair the obligations of any contract or agreement, or will be in contravention of or contrary to Section 1 of Article XIV of the Amendments to the Constitution of the United States"; and further denies that "any such action will be depriving the plaintiff of equal protection of the law."

Further answering the allegations of subdivision 17, this answering defendant admits the allegations of subdivision 17 that "the plaintiff has generated by the use of water power obtained by it from water therein, pursuant to the terms of said losses from 1911 to 1925, a large amount of electricity," but denies that "said electricity has been sold to the public for less than prices for which it could have been sold had it been generated by steam power." This answering defendant is not advised as to the quantity of the [fol. 51] electricity which has been manufactured by the plaintiff during said period, as set forth in said subdivision 17. This answering defendant admits the allegations of said subdivision 17, except such as are hereinbefore denied.

18. This answering defendant says that the Law lease, referred to in subdivision 4 of the Bill of Complaint, the supplementary Law lease, the Tryon lease, and the Maumee Paper Company lease, referred to in subdivision 7 of the Bill of Complaint, provide for the use of water for hydraulic power from points northeast of the portion of said canal abandoned by the 1927 Act of the Ohio General Assembly and are not directly affected by the terms of said Abandonment Act.

19. This answering defendant further says that the plaintiff does not now, and never has since the acquirement of any of said leases, taken any water from that portion of the

Miami and Erie Canal abandoned by said Act of 1927, pursuant to said Law lease, supplementary Law lease, Tryon lease, Detwiler lease, Maumee Paper Company lease, and Thomas W. Studer lease, referred to in the Bill of Complaint. That said plaintiff is using water from said canal at a point approximately three and one-half miles northeast from the portion of said canal abandoned as aforesaid; that the plaintiff's use of the water at such points for hydraulic power is now, and was at all times mentioned in the Bill of Complaint, subject to the rights of the State of Ohio, to the abandonment of the canal at its source, to wit, at Grand Rapids, Ohio.

Wherefore, this answering defendant prays that the Bill of Complaint of the plaintiff be dismissed at plaintiff's costs.

Geo. W. Ritter, M. S. Dodd, Solicitors.

[fol. 52] *Duly sworn to by Martin S. Dodd. Jurat omitted in printing.*

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

JOINT ANSWER OF THE VILLAGE OF MAUMEE, OHIO, AND THE VILLAGE OF WATERVILLE, OHIO—Filed May 7, 1928

Now come the defendants, the Village of Maumee, Ohio, and the Village of Waterville, Ohio, and representing that they are respectively duly organized and existing under the laws of the State of Ohio, and for their joint answer to the Bill of Complaint of the plaintiff, represent as follows:

1. These answering defendants admit the allegations of subdivision 1.

2. These answering defendants admit the allegations of subdivision 2.

3. By way of answer to the allegations of subdivision 3, these answering defendant deny that "the State of Ohio constructed said canal for the purpose of supplying water for hydraulic purposes and uses in the operation of industrial plants, hydro-electric plants and other industrial en-

terprises"; and further denies that "the law of the State of Ohio authorized the Board of Canal Commissioners to locate, construct and put in operation the Miami and Erie Canal for the purpose of supplying water for hydraulic power." These answering defendants admit the allegations of subdivision 3, except such as are hereinbefore denied.

4. By way of answer to the allegations of subdivision 4, these answering defendants deny the allegations as to the legal effect of acts of the legislature therein referred to and the terms of any leases therein referred to, said defendants referring to the terms of said acts and the terms of said leases as to the legal effect thereof; and further deny that "said canal has been operated for the purpose of supplying water for hydraulic power to industrial plants, hydro elec- [fol. 54] tric plants and other industrial purposes"; and further deny that "the State of Ohio has entered into a great number of leasing contracts"; and further deny that "the plaintiff, relying upon the laws and constant use and practice followed by the State of Ohio in granting leases of water from said canal, as aforesaid, became the owner of the lease therein mentioned, granted by the State of Ohio to Robert J. Law, Trustee, on March 12, 1895"; and further deny that "the State of Ohio has realized a great amount of income from any such leases"; and further deny that "rentals provided for in said leases have always been paid by plaintiff"; and further deny that "said lease has become renewed and vests in the plaintiff for the renewal period of thirty (30) years from March 12, 1925"; and further deny that "plaintiff has at all times since the acquirement by it of said lease complied with the terms and conditions thereof and has kept said canal and all parts thereof in good order and repair at its own cost and expense and without any expense to the State of Ohio"; and further deny the allegations contained in the last paragraph of subdivision 4. These answering defendants admit the allegations of subdivision 4, except such as are hereinbefore denied.

5. By way of answer to the allegations of subdivision 5, these answering defendants deny the allegation that "on the acquirement of said lease for carrying on its business of generating electricity for light, heat and power purposes by

water power, it acquired 'and as therein alleged''; and further deny that the "hydro-electric plant was erected and installed at great expense"; and further denies that "a large water flume was installed by the plaintiff at great expense"; and further denies that "there was any water 'called for' by said lease to be furnished to plaintiff by the State of Ohio." These answering defendants admit the allegations of subdivision 5, except such as are hereinbefore denied.

6. These answering defendants admit the allegation of subdivision 6.

7. By way of answer to the allegations of subdivision 7, these answering defendants deny the allegation that "the plaintiff purchased the four (4) leases therein mentioned, relying upon the policy declared by the State of Ohio, as set forth in the Bill of Complaint, and upon any long established policy, custom or practice followed by the State of Ohio in granting leases of water from said canal to water users for hydro-electric or other industrial purposes"; and [fol. 55] further deny the allegations as to the legal effect of the leases therein referred to, these answering defendants referring to the terms of said leases for the provisions thereof; and further deny that "the supplementary lease referred to in paragraph marked 'C' of said subdivision was granted for the purpose of enabling the State to give satisfactory and adequate service to the plaintiff and to increase the flow of said canal between said State Dam and said hydro-electric plant, and to increase the revenues of the State of Ohio from said lease"; and further deny that "the plaintiff expended the sum of Fifty-three Thousand Dollars ($53,000.00) in the removal of rock bars and the excavation, deepening and widening of said canal." These answering defendants admit the allegations of subdivision 7, except such as are hereinbefore denied.

8. By way of answer to the allegations of subdivision 8, these answering defendants deny the allegation that "the plaintiff elected to take a renewal of each of said leases, including said supplementary lease"; and further deny that "the plaintiff has paid and is still paying rentals to the State of Ohio in accordance with each and all of said

leases"; and further deny that "plaintiff has fully complied with each and all of the terms and conditions and has fully done and performed the things by it to be done and performed by said lease, including the upkeep, maintenance, repair and improvement of said canal and all equipment and facilities connected therewith and used in the operation of the same, from the point where said canal connects with the Maumee River above said Grand Rapids State Dam northeasterly to said Lock No. 45." These answering defendants admit the allegations of subdivision 8, except such as are hereinbefore denied.

9. By way of answer to the allegations of subdivision 9, these answering defendants deny the allegation that "the plaintiff increased the capacity of said hydro-electric plant in reliance upon the long established policy, custom and practice followed by the State of Ohio in granting leases of water from said canal, or in reliance upon the declaration by the State of Ohio that said Miami and Erie Canal and its water supplies, reservoirs, dams, feeders and adjacent lands from Cincinnati to Toledo should be retained and maintained as a public canal"; and further deny that "said auxiliary steam plant was installed and has been maintained for the purpose of assisting the water plant in generating electricity"; and further denies that "electricity is being sold to the public for light, heat and power purposes"; and [fol. 56] further deny that "said hydro-electric plant, including the land, building and equipment, is of the value of Three Hundred Thousand Dollars ($300,000.00) or more"; and further denies that "said leases and water rights are of a minimum value of Four Hundred and Fifty Thousand ($450,000.00) Dollars." These answering defendants admit the allegations of subdivision 9, except such as are hereinbefore denied.

10. These answering defendants admit the allegations of subdivision 10.

11. These answering defendants admit all of the allegations of subdivision 11, excepting as to the legal effect of the Act of the General Assembly therein referred to, and hereby refer to the terms and conditions of said Act as to the legal effect thereof.

12. By way of answer to the allegations of subdivision 12, these answering defendants deny that "plaintiff notified the City of Toledo of its rights under said leases" as therein alleged; and further deny that "the defendant the City of Toledo has at all times since the passage of said Act been aware of plaintiff's water rights and privileges." These answering defendants admit the allegations of subdivision 12, except such as are hereinbefore denied.

13. By way of answer to the allegations of subdivision 13, these answering defendants deny the allegations as to the legal effect of said deed, therein mentioned, and reference is made to said deed as to the legal effect of the terms and provisions thereof. These answering defendants deny that the deed therein referred to provided that the plaintiff and the Milling Company had any rights under said leases to renewals thereof.

14. By way of answer to the allegations of subdivision 14, these answering defendants deny the allegations as to the effect of the decision and judgment of the United States Circuit Court of Appeals, therein referred to, and deny the effect of said decision and judgment as set forth in said subdivision, and refers to the said decision and judgment as to the effect thereof; and further deny that the defendants, "The City of Toledo, Ohio, or the Commissioners of Lucas County, Ohio, or the Villages of Maumee, Ohio and Waterville, Ohio, entered into any conspiracy in relation to the passage of said Act of the General Assembly" as alleged in said subdivision. These answering defendants admit the allegations of subdivision 14, except those hereinbefore denied.

[fol. 57] 15. By way of answer to the allegations of subdivision 15, these answering defendants deny the allegation that "the Act of the General Assembly therein referred to was passed in pursuance of the action of the defendants, the City of Toledo, the Commissioners of Lucas County, Ohio, and the Villages of Maumee and Waterville, Ohio"; and these answering defendants admit the allegations of subdivision 15, except such as are hereinbefore denied.

16. By way of answer to the allegations of subdivision 16, these answering defendants admit, as alleged in sub-

division 16, that there is no other place on the Miami and Erie Canal on which plaintiff can exercise or avail itself of the acts and privileges granted to it under said lease, except on said 18 mile level, and admit that "the plaintiff will realize financial benefit and profit by the the continued use of water taken from said canal." These answering defendants deny that "by virtue of said Act of Abandonment of 1927, plaintiff is deprived of any right or privilege"; and further deny that "plaintiff should be compensated on account of any loss it may sustain by virtue of the provisions of said Act"; and further deny that "there is any confiscation of plaintiff's rights or privileges." These answering defendants admit, as alleged in subdivision 16, that "the defendant George F. Schlessinger, as Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio, in pursuance of the terms of the Act referred to in said subdivision 15, is threatening to, and unless restrained by this Court will, immediately drain the water out of said 18 mile level and prevent water from flowing into said Canal," but deny that any such acts of said defendants will take away any rights or privileges of the plaintiff. These answering defendants admit the allegations of subdivision 16, except such as are hereinbefore denied.

17. By way of answer to the allegation of subdivision 17, these answering defendants deny the allegation that "any rights of the plaintiff will be destroyed, ruined or confiscated by any action to be taken by any of the defendants herein"; and further deny that "any such action on the part of these defendants will be taking of any of plaintiff's property without compensation and without due process of law"; and further deny that "any such taking will be in violation of any of the said leases or in violation of any contract between the State of Ohio and the City of Toledo"; and further deny that "any such action will be in contra- [fol. 58] vention of or contrary to Section 10 of Article I of the Constitution of the United States, or will impair the obligations of any contract or agreement or will be in contravention of or contrary to Section 1 of Article XIV of the Amendments to the Constitution of the United

States"; and further deny that "any such action will be depriving the plaintiff of equal protection of the law."

Further answering the allegations of Subdivision 17, these answering defendants admit the allegations of subdivision 17 that "the plaintiff has generated by the use of water power obtained by it from water therein, pursuant to the terms of said leases from 1911 to 1925, a large amount of electricity," but deny that "said electricity has been sold to the public for less than prices for which it could have been sold had it been generated by steam power." These answering defendants are not advised as to the quantity of the electricity which has been manufactured by the plaintiff during said period, as set forth in said subdivision 17. These answering defendants admit the allegations of said subdivision 17, except such as are hereinbefore denied.

18. These answering defendants say that the Law lease, referred to in subdivision 4 of the Bill of Complaint, the supplementary Law lease, the Tryon lease, and the Maumee Paper Company lease, referred to in subdivision 7 of the Bill of Complaint, provide for the use of water for hydraulic power from points northeast of the portion of said canal abandoned by the 1927 Act of the Ohio General Assembly and are not directly affected by the terms of said Abandonment Act.

19. These answering defendants further say that the plaintiff does not now, and never has since the acquirement of any of said leases, taken any water from that portion of the Miami and Erie Canal abandoned by said Act of 1927, pursuant to said Law lease, supplementary Law lease, Tryon lease, Detwiler lease, Maumee Paper Company lease, and Thomas W. Studer lease, referred to in the Bill of Complaint. That said plaintiff is using water from said canal at a point approximately three and one-half miles northeast from the portion of said canal abandoned as aforesaid; that the plaintiff's use of the water at such points for hydraulic power is now, and was at all times mentioned in the Bill of Complaint, subject to the rights of the State of Ohio, to the abandonment of the canal at its source, to-wit, at Grand Rapids, Ohio.

[fol. 59] Wherefore these answering defendants pray that the Bill of Complaint of the plaintiff be dismissed at plaintiff's costs.

——— ———, Attorney for the Village of Maumee and the Village of Waterville, Ohio.

Duly sworn to by Martin S. Dodd. Jurat Omitted in printing.

[fol. 60] In United States District Court

[Title omitted]

Answer of Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, Commissioners of Lucas County, Ohio

Now come the defendants, Roy E. Davis, Ralph E. Farnsworth and George R. Hoffman, Commissioners of Lucas County, Ohio, and for answer to the Bill of Complaint of the plaintiff, represent as follows:

1. These answering defendants admit the allegations of subdivision 1.

2. These answering defendants admit the allegations of subdivision 2.

3. By way of answer to the allegations of subdivision 3, these answering defendants deny that "the State of Ohio constructed said canal for the purpose of supplying water for hydraulic purposes and uses in the operation of industrial plants, hydro-electric plants and other industrial enterprises;" and further deny that "the laws of the State of Ohio authorized the Board of Canal Commissioners to locate, construct and put in operation the Miami and Erie Canal for the purpose of supplying water for hydraulic power." These answering defendants admit the allegations of subdivision 3, except such as are hereinbefore denied.

4. By way of answer to the allegations of subdivision 4, these answering defendants deny the allegations as to the [fol. 61] legal effect of acts of the legislature therein re-

ferred to and the terms of any leases therein referred to, said defendants referring to the terms of said acts and the terms of said leases as to the legal effect thereof; and further deny that "said canal has been operated for the purpose of supplying water for hydraulic power to industrial plants, hydro-electric plants and other industrial purposes"; and further deny that "the State of Ohio has entered into a great number of leasing contracts;" and further deny that "the plaintiff, relying upon the laws and constant use and practice followed by the State of Ohio in granting leases of water from said canal, as aforesaid, became the owner of the lease therein mentioned, granted by the State of Ohio to Robert J. Law, Trustee, on March 12, 1895;" and further deny that "the State of Ohio has realized a great amount of income from any such leases;" and further deny that "rentals provided for in said leases have always been paid by plaintiff;" and further deny that "said lease has become renewed and vests in the plaintiff for the renewal period of thirty (30) years from March 12, 1925"; and further deny that "plaintiff has at all times since the acquirement by it of said lease complied with the terms and conditions thereof and has kept said canal and all parts thereof in good order and repair at its own cost and expense and without any expense to the State of Ohio;" and further deny the allegations contained in the last paragraph of subdivision 4. These answering defendants admit the allegations of subdivision 4, except such as are hereinbefore denied.

5. By way of answer to the allegations of subdivision 5, these answering defendants deny the allegation that "on the acquirement of said lease for carrying on its business of generating electricity for light, heat and power purposes by water power, it acquired land as therein alleged;" and further deny that the "hydro-electric plant was erected and installed at great expense"; and further deny that "a large water flume was installed by the plaintiff at great [fol. 62] expense;" and further deny that "there was any water 'called for' by said lease to be furnished to plaintiff by the State of Ohio." These answering defendants admit the allegations of subdivision 5, except such as are hereinbefore denied.

6. These answering defendants admit the allegations of subdivision 6.

7. By way of answer to the allegations of subdivision 7, these answering defendants deny the allegation that "the plaintiff purchased the four (4) leases therein mentioned, relying upon the policy declared by the State of Ohio, as set forth in the Bill of Complaint, and upon any long established policy, custom or practice followed by the State of Ohio in granting leases of water from said canal to water users for hydro-electric or other industrial purposes"; and further deny that "any leases required water to be delivered to the plaintiff at Maumee, Ohio"; and further deny the allegations as to the legal effect of the leases therein referred to, these answering defendants referring to the terms of said leases for the provisions thereof; and further deny that "the supplementary lease referred to in paragraph marked 'C' of said subdivision was granted for the purpose of enabling the State to give satisfactory and adequate service to the plaintiff and to increase the flow of said canal between said State Dam and said hydro-electric plant, and to increase the revenues of the State of Ohio from said lease"; and further deny that "the plaintiff expended the sum of Fifty-three Thousand ($53,000.00) Dollars in the removal of rock bars and the excavation, deepening and widening of said canal." These answering defendants admit the allegations of subdivision 7, except such as are hereinbefore denied.

8. By way of answer to the allegations of subdivision 8, these answering defendants deny the allegation that "the plaintiff elected to take a renewal of each of said leases, in- [fol. 63] cluding said supplementary lease; and further deny that "the said supplementary lease was renewed with said Law lease"; and further deny that "the plaintiff has paid and is still paying rentals to the State of Ohio in accordance with each and all of said leases"; and further deny that "plaintiff has fully complied with each and all of the terms and conditions and has fully done and performed the things by it to be done and performed by said lease, including the upkeep, maintenance, repair and improvement of said canal and all equipment and facilities connected therewith and used in the operation of the same, from the point where said

canal connects with the Maumee River above said Grand Rapids State Dam northeasterly to said Lock No. 45." These answering defendants admit the allegations of subdivision 8, except such as are hereinbefore denied.

9. By way of answer to the allegations of subdivision 9, these answering defendants deny the allegation that "the plaintiff increased the capacity of said hydro-electric plant in reliance upon the long established policy, custom and practice followed by the State of Ohio in granting leases of water from said canal, or in reliance upon the declaration by the State of Ohio that said Miami and Erie Canal, and its water supplies, reservoirs, dams, feeders and adjacent lands from Cincinnati to Toledo should be retained and maintained as a public canal"; and further deny that "said auxiliary steam plant was installed and has been maintained for the purpose of assisting the water plant in generating electricity"; and further deny that "electricity is being sold to the public for light, heat and power purposes"; and further deny that "said hydro-electric plant, including the land, building and equipment, is of the value of Three Hundred Thousand Dollars ($300,000.00) or more"; and further deny that "said leases and water rights are of a minimum value of Four Hundred and Fifty Thousand Dollars ($450,000.00)." These answering defendants admit the allegations of subdivision 9, except such as are hereinbefore denied.

[fol. 64] 10. These answering defendants admit the allegations of Subdivision 10.

11. These answering defendants admit all of the allegations of subdivision 11, excepting as to the legal effect of the Act of the General Assembly therein referred to, and hereby refer to the terms and conditions of said Act as to the legal effect thereof.

12. By way of answer to the allegations of subdivision 12, these answering defendants deny that "plaintiff notified the City of Toledo of its rights under said leases" as therein alleged; and further deny that "the defendant the City of Toledo has at all times since the passage of said Act been aware of plaintiff's water rights and privileges." These answering defendants admit the allegations of subdivision 12, except such as are hereinbefore denied.

13. By way of answer to the allegations of subdivision 13, these answering defendants deny the allegations as to the legal effect of said deed, therein mentioned, and reference is made to said deed as to the legal effect of the terms and provisions thereof. These answering defendants deny that the deed therein referred to provided that the plaintiff and the Milling Company had any rights under said leases to renewals thereof.

14. By way of answer to the allegations of subdivision 14, these answering defendants deny the allegations as to the effect of the decision and judgment of the United States Circuit Court of Appeals, therein referred to, and deny the effect of said decision and judgment as set forth in said subdivision, and refer to the said decision and judgment as to the effect thereof; and further deny that the defendants, "The City of Toledo, Ohio, or the Commissioners of Lucas County, Ohio, or the Villages of Maumee, Ohio, and Waterville, Ohio, entered into any conspiracy in relation to the passage of said Act of the General Assembly" as alleged in said subdivision. These answering defendants admit the allegations of subdivision 14, except those hereinbefore denied.

[fol. 65] 15. By way of answer to the allegations of subdivision 15, these answering defendants deny the allegation that "the Act of the General Assembly therein referred to was passed in pursuance of the action of the defendants, the City of Toledo, the Commissioners of Lucas County, Ohio, and the Villages of Maumee and Waterville, Ohio"; and these answering defendants admit the allegations of subdivision 15 except such as are hereinbefore denied.

16. By way of answer to the allegations of subdivision 16, these answering defendants admit, as alleged in subdivision 16, that there is no other place on the Miami and Erie Canal on which plaintiff can exercise or avail itself of the acts and privileges granted to it under said lease, except on said 18 mile level, and admit that "the plaintiff will realize financial benefit and profit by the continued use of water taken from said canal." These answering defendants deny that "the plaintiff is longer entitled to take water from said canal"; and further deny that "by virtue of said Act of

Abandonment of 1927, plaintiff is deprived of any right or privilege"; and further deny that "plaintiff should be compensated on account of any loss it may sustain by virtue of the provisions of said Act;" and further deny that "there is any confiscation of plaintiff's rights or privileges." These answering defendants admit, as alleged in subdivision 16, that "the defendant George F. Schlessinger, as Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio, in pursuance of the terms of the Act referred to in said subdivision 15, is threatening to, and unless restrained by this Court will, immediately drain the water out of said 18 mile level and prevent water from flowing into said canal," but deny that any such acts of said defendant will take away any rights or privileges of the plaintiff. These answering defendants admit the allegations of subdivision 16, except such as are hereinbefore denied.

[fol. 66] 17. By way of answer to the allegations of subdivision 17, these answering defendants deny the allegation that "any rights of the plaintiff will be destroyed, ruined or confiscated by any action to be taken by any of the defendants herein"; and further deny that "any such action on the part of these defendants will be the taking of any of plaintiff's property without compensation and without due process of law"; and further deny that "any such taking will be in violation of any of said leases or in violation of any contract between the State of Ohio and the City of Toledo"; and further deny that "any such action will be in contravention of or contrary to Section 10 of Article 1 of the Constitution of the United States, or will impair the obligations of any contract or agreement, or will be in contravention of or contrary to Section 1 of Article XIV of the amendments to the Constitution of the United States"; and further deny that "any such action will be depriving the plaintiff of equal protection of the law."

Further answering the allegations of subdivision 17, these answering defendants admit the allegations of subdivision 17 that "the plaintiff has generated by the use of water power obtained by it from water therein, pursuant to the terms of said leases from 1911 to 1925, a large amount of electricity," but deny that "said electricity has been sold to the public for less than prices for which it could have

been sold had it been generated by steam power." These answering defendants are not advised as to the quantity of the electricity which has been manufactured by the plaintiff during said period, as set forth in said subdivision 17. These answering defendants admit the allegations of said subdivision 17, except such as are hereinbefore denied.

18. These answering defendants say that the Law Lease, referred to in subdivision 4 of the Bill of Complaint, the supplementary Law Lease, the Tryon lease, and the Maumee Paper Company lease, referred to in subdivision 7 of the Bill of Complaint, provide for the use of water for hydraulic power from points northeast of the portion of said canal abandoned by the 1927 Act of the Ohio General Assembly and are not directly affected by the terms of said Abendonment Act.

[fol. 67] 19. These answering defendants further say that the plaintiff does not now, and never has since the acquirement of any of said leases, taken any water from that portion of the Miami and Erie Canal abandoned by said Act of 1927, pursuant to said Law Lease, supplementary Law lease, Tryon lease, Detwiler lease, Maumee Paper Company lease, and Thomas W. Studer lease, referred to in the Bill of Complaint. That said plaintiff is using water from said canal at a point approximately three and one-half miles northeast from the portion of said canal abandoned as aforesaid; that the plaintiff's use of the water at such points for hydraulic power is now, and was at all times mentioned in the Bill of Complaint, subject to the rights of the State of Ohio, to the abandonment of the canal at its source, to-wit, at Grand Rapids, Ohio.

Wherefore these answering defendants pray that the Bill of Complaint of the plaintiff be dismissed at plaintiff's costs.

L. D. Hunt, H. A. Krueger, Solicitors.

Duly sworn to by Ralph V. Farnsworth. Jurat omitted in printing.

[fol. 68] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE EVIDENCE, ETC.

In addition to the admissions made and contained in the pleadings it is hereby stipulated and agreed by and between the parties plaintiff and defendant and by and between their respective counsel in this cause, as follows:

1. That so far as they are material to the issues involved in this cause, the originals of the leases, agreements and application for renewal thereof, grants, deeds, records of administrative boards, resolutions, ordinances, corporation records of electricity generated, court records, pleadings, orders and decrees; letters, special and general laws of the State of Ohio, and court opinions and decisions, and other instruments and documents listed below in this stipulation, may be considered as offered and received in evidence without formal proof and that copies of the same respectively, except said laws, opinions and decisions, are attached hereto and may be used in evidence in lieu of the originals and be designated as stipulation exhibits numbered consecutively from 1 upward.

Stipulation Exhibit No. 1. Robert J. Law, Trustee, Lease.

Stipulation Exhibit No. 2. Agreement and Supplemental Lease.

Stipulation Exhibit No. 3. Thomas W. Studer Lease.

[fol. 69] Stipulation Exhibit No. 4. A. C. Tyron Lease.

Stipulation Exhibit No. 5. The Maumee Paper Company Lease.

Stipulation Exhibit No. 6. The George K. Detweiler Lease.

Stipulation Exhibit No. 7. The James Purdy Quit Claim Grant to State of Ohio.

Stipulation Exhibit No. 8. The Peter Minor Lease.

Stipulation Exhibit No. 9. Proceedings of the Board of Public Works of the State of Ohio on the claim of Peter Minor, under date of February 23, 1846.

Stipulation Exhibit No. 10. The Toledo Grain and Milling Company Lease.

Stipulation Exhibit No. 11. Resolution of the Council of the City of Toledo accepting appraisement and declaring

intention of the City of Toledo to purchase the abandoned bed of the Miami & Erie Canal included in the provisions of House Bill No. 560 General Assembly of Ohio, published in Volume 108, Part 2, pages 1138 to 1141, Laws of Ohio, passed January 22, 1920; said resolution having been passed by said City Council September 11, 1922.

Stipulation Exhibit No. 12. Ordinance No. 3043 passed by City Council of Toledo, Ohio, September 10, 1923, authorizing Director of Public Service to take necessary steps for eliminating water in the Miami & Erie Canal and to make settlement with The Defiance Gas & Power Company (so-called) and The Toledo Grain & Milling Company.

It is agreed that by mistake the name "The Defiance Gas & Power Company" was used instead of "The Maumee Valley Electric Company," plaintiff in this cause.

Stipulation Exhibit No. 13. Resolution by the City Council of Toledo declaring it necessary to cut off the flow of water of the Miami & Erie Canal at the southerly end of the portion of that canal acquired by said City and authorizing and directing the Director of Public Service to proceed to that end, passed March 9, 1925.

Stipulation Exhibit No. 14. Corporation record of the plaintiff, The Maumee Valley Electric Company, showing the kilowatt hours of electricity generated at the hydro-electric plant located in Maumee, Ohio, as mentioned and described in the Bill of Complaint, for the years 1914 to 1927, both inclusive, to and including March, 1928.

Stipulation Exhibit No. 15. Deed from the State of Ohio to the City of Toledo, Ohio, for the canal lands therein described executed and delivered by the Governor of Ohio on December 29, 1922.

Stipulation Exhibit No. 16. Final decree filed July 7, 1925 in Case No. 515 in Equity, The Maumee Valley Electric Company, Plaintiff, vs. The City of Toledo, Ohio, et al., Defendants, in the District Court of the United States for [fol. 70] the Northern District of Ohio, Western Division.

Stipulation Exhibit No. 17. Final decree filed May 14, 1926, in Case No. 4483, The Maumee Valley Electric Company, Appellant, vs. The City of Toledo, et al., Appellees, in the United States Circuit Court of Appeals for the Sixth Circuit, and being the decree entered in said Court of Appeals on appeal thereto from said final decree in said Case No. 515 in equity above mentioned.

Stipulation Exhibit No. 18. Final decree on mandate from the United States Circuit Court of Appeals in said Case No. 515 in equity.

Stipulation Exhibit No. 19. Application by plaintiff, The Maumee Valley Electric Company for renewal of said Robert J. Law, Trustee, lease, Supplemental Lease and Agreement, George K. Detweiler lease, A. C. Tryon lease, The Maumee Paper Company lease and Thomas W. Studer lease.

Stipulation Exhibit No. 20. Petition in the case of The Maumee Valley Electric Company, Plaintiff, vs. Louis A. Boulay, individually and as Superintendent of Public Works of Ohio, etc., Defendant, filed March 14, 1925 in the Court of Common Pleas of Franklin County, Ohio, as Case No. 101344 in that court.

Stipulation Exhibit No. 21. Entry and Order of Temporary Injunction made and entered in said Case No. 101344.

Stipulation Exhibit No. 22. Letter from plaintiff The Maumee Valley Electric Company to Honorable Victor Donahey, Governor of the State of Ohio, under date of April 2, 1925, relative to Senate Bill No. 148 and the renewal to plaintiff of said Robert J. Law and other leases.

2. That the sections of the Constitution of the State of Ohio, the Legislative Acts and Resolutions of the General Assembly of Ohio and of the State of Indiana and the Legislative Acts of the Congress of the United States, all as listed on Stipulation Exhibit No. 23 filed hereunder in this cause, and any other special or general Act or Resolution of said General Assembly of Ohio relating to the Miami & Erie Canal, together with the opinion and decision of the United States Circuit Court of Appeals for the Sixth Circuit, reported in Volume 13, 2nd Series, Federal Reporter, pages 98 to 105 inclusive, deciding Case No. 4483 in that court and being the appeal thereto by the plaintiff here from said decree of the District Court of the United States for the Northern District of Ohio, Western Division in said Case No. 515 in equity in said District Court, shall be considered as in evidence before this court and any reviewing court so far as relevant and material to this controversy, without incorporating the same a part of the record in this case; and that counsel for either plaintiff or defendants may

[fol. 71] refer to or quote any provision or provisions, part or parts thereof in argument or brief as if matters of judicial notice, subject to correction by opposing counsel through reference to and quotation from authentic publications without encumbering the record in this cause by formally incorporating the same in full as a part of such record.

3. That the testimonial statements of Harden L. Crawford, President of plaintiff company, and E. A. Dorszeski and Lewis E. Ayres, Hydraulic Engineers, are received in evidence as set out in Stipulation Exhibit No. 24 filed hereunder in this cause, and that if duly called and sworn as witnesses in this cause, they respectively would testify as shown and stated in said Stipulation Exhibit No. 24.

4. That plaintiff, with the knowledge and consent of the State of Ohio, became the owner of the leases, agreements and grants, of which Stipulation Exhibits Nos. 1 to 6 inclusive are copies respectively, on the dates respectively as alleged in the bill of complaint; that on the 27th day of April, 1910, it became the owner of the Purdy quit claim grant, of which Stipulation Exhibit No. 7 is a copy; that it still is the owner of all of said leases, agreements and grants and since its said ownership began has operated and still is operating said leases, agreements and grants in the manner and for the purposes as set forth in the bill of Complaint; that through mistake of counsel said Purdy quit claim grant, of which Stipulation Exhibit No. 7 is a copy, was not set up in the bill of complaint as one of the grants belonging to the plaintiff and it is agreed that said grant and the rights therein reserved to the grantor, James Purdy, became, on the 27th day of April, 1910, and still are, the property of the plaintiff and that they were so acquired and have been and still are operated in connection with and for the same purposes as plaintiff has operated and still is operating said other leases, agreements and grants, of which Stipulation Exhibits Nos. 1 to 6 are copies; and that this stipulation and other stipulations with respect to said Purdy quit claim grant set out in this stipulation and agreement between the parties in this cause on the evidence, shall be accepted as true statements as to the acquirement, purpose of acquirement, ownership and operation of said Purdy grant by plaintiff in lieu of an [fol. 72] amendment of the bill of complaint showing such

facts and that under such statement of facts with reference thereto said Purdy quit claim grant shall be considered in evidence as though such facts had been set up in the bill of complaint or in an amendment thereof.

This paragraph shall not be deemed to be an admission by defendants of any rights in plaintiff outside of those granted by law governing this case under said leases, grants and agreements and the other evidence and facts in this case.

5. That throughout the time from the acquirement by plaintiff of said leases, agreements and grants, respectively, Stipulation Exhibits Nos. 1 to 7 inclusive, to the present time, all rentals called for by them respectively have been paid by plaintiff to and accepted by the State of Ohio at the respective times specified in said leases, agreements and grants, respectively, including such payments on said Law lease, Stipulation Exhibit No. 1, and Supplementary Agreement, Stipulation Exhibit No. 2, since March 12, 1925; and that as alleged in the bill of complaint, plaintiff has throughout the time of its ownership of said leases, agreements and grants, respectively, performed all the obligations stipulated in each of them for plaintiff to perform.

6. That plaintiff filed its application with the Director of Highways and Public Works and Superintendent of Public Works at Columbus, Ohio, on August 7, 1924 for a renewal of said Law, Supplemental, Studer, Tryon, Maumee Paper Company and Detweiler leases, Stipulation Exhibits Nos. 1 to 6 inclusive, of which application Stipulation Exhibit No. 19 is a copy.

7. That prior to and at the time of the purchase by defendant City of Toledo, Ohio of the north end of said Miami & Erie Canal extending from Swan Creek in said City of Toledo south a distance of 8.87 miles, as provided for in said Act of the General Assembly of the State of Ohio passed January 22, 1920, 108 Ohio Laws, Part 2, page 1138, said City was aware and had knowledge of plaintiff's claim to water rights under its aforesaid alleged leases, agreements and grants.

8. That all the water taken from the canal by plaintiff under its leases, agreements and grants, is taken out of said

canal by plaintiff at said hydro-electric plant in the Village of Maumee, located as shown in Stipulation No. 14 and in Stipulation Exhibit No. 25, and is discharged by plaintiff into the Maumee River after use thereof by plaintiff and is not returned to the canal.

[fol. 73] 9. That no written lease in renewal of the Law lease and Supplement thereto has ever been delivered by the State of Ohio to the plaintiff.

10. That plaintiff has never paid or tendered any rental under any of its water leases to defendant The City of Toledo.

11. That the case of The Maumee Valley Electric Company, a corporation, Plaintiff, vs. Louis A. Boulay, individually and as Superintendent of Public Works of Ohio and as Director of the Department of Highways and Public Works of that state, Defendant, No. 101344 on the docket of the Court of Common Pleas of Franklin County, Ohio, was duly begun on March 14, 1925; that Stipulation Exhibit No. 20 filed hereunder is a true copy of the petition filed in that case; that Stipulation Exhibit No. 21 is a true copy of the entry granting a temporary injunction entered on that day and duly served upon said defendant in that case, Louis A. Boulay; that Stipulation Exhibit No. 22 is a true copy of a letter sent to the Governor of the State of Ohio on April 2, 1925 and that a copy thereof was on that day sent to said defendant Boulay and to his Assistant Superintendent of Public Works of Ohio at Columbus, Ohio.

12. That said eighteen-mile level of said Miami & Erie Canal mentioned in the bill of complaint comprises that part of said Miami & Erie Canal extending from Lock No. 45 on said canal located about one-half mile north of said hydro-electric plant in the Village of Maumee southwesterly to the Guard Lock, otherwise known as Lock No. 9 on said canal and on the north bank of the Maumee River in Lucas County, Ohio, opposite said Village of Grand Rapids, Ohio, said Guard Lock being about three-fourths of a mile northeasterly from the point where said Miami & Erie Canal connects with the Maumee River above said Grand Rapids State Dam.

There is no hydro-electric or other plant or means at or through which plaintiff can use the water leased to it under its said leases, agreements and grants on said canal except at said hydro-electric plant mentioned and described in the bill of complaint and Stipulation Exhibit No. 24 and there is no source from which water may be procured to operate said hydro-electric plant except from said Miami & Erie [fol. 74] Canal at the point and as described in the bill of complaint.

13. That upon the acquirement by plaintiff of said Law lease, plaintiff acquired the land at Farrar Street in the Village of Maumee, Ohio on which was and is located the hydro-electric plant mentioned in the bill of complaint and Stipulation Exhibit No. 24 and that as a part of the work of increasing the capacity of said plant as mentioned in the bill of complaint and said Stipulation Exhibit No. 24, plaintiff excavated and constructed through the land on and along the west side of said Farrar Street from the southerly side of said Miami & Erie Canal southeasterly a distance of three hundred feet to the River Road so-called at a point just above said hydro-electric plant, all in the Village of Maumee, Ohio, an open water flume fifty feet in width at the top—forty feet in width at the bottom and about twelve feet deep. That the water used in the operation of said hydro-electric plant is drawn from said canal through said open water flume to said point above said hydro-electric plant on the west side of said River Road and from there it is carried through iron flumes under the ground down to the turbine wheels of said plant at a fall of sixty-one feet.

14. That Stipulation Exhibit No. 25 is a map of the two lineal parts of said Miami & Erie Canal in question in this case and is a true representation thereof and of its termini, location with respect to the Maumee River, Broadway and River Road, so-called, the location of Swan Creek into which said canal empties at its present northerly end, as mentioned in the bill of complaint, the location of The Toledo Grain & Milling Company mill, Lock No. 45 on said canal, the location of said hydro-electric plant mentioned in the bill of complaint and Stipulation Exhibit No. 24, the open water flume leading from said canal southeasterly to said hydro-electric plant, the Village of Maumee, Ohio, the

Maumee side-cut or outlet from said canal down to the Maumee River at a fall of fifty-five feet, the Village of Waterville, Ohio, Guard Lock or Lock No. 9 on said canal, the Town of Providence, unincorporated, in Lucas County, Ohio, the Village of Grand Rapids in Wood County, Ohio, the flour mill just above the Guard Lock on the north bank of the Maumee River, the Grand Rapids State Dam and the connection of said canal with Maumee River.

[fol. 75] The waters in said canal and in said Maumee River run northeasterly and the lineal part of said canal purchased by defendant City of Toledo under provisions of the Act of the General Assembly of Ohio passed January 22, 1920, 108 Ohio Laws, Part 2, pages 1138 to 1141, inclusive, extends from the present northerly end of said canal at its outlet into Swan Creek southwesterly to a line across said canal 1.6 miles southwesterly from said open water flume carrying water to said hydro-electric plant, said line being just northeasterly of said Maumee side-cut.

The lineal part of said canal sought to be abandoned under the Act of the General Assembly of the State of Ohio passed May 11, 1927, 112 Ohio Laws, 360 to 363, (see Stipulation Exhibit No. 23, par. 55) extends from said line just northeasterly of said Maumee side-cut southwesterly to where said canal connects with the Maumee River above and southwesterly from the Grand Rapids State Dam.

All of the waters delivered by plaintiff to said hydro-electric plant are carried from the pool in said Maumee River above and southwesterly from said dam through said Miami & Erie Canal northeasterly past said Maumee side-cut and on northeasterly over said 1.6 miles of that part of said canal purchased by defendant City of Toledo as aforesaid to said water flume and through said water flume to said hydro-electric plant.

15. Since the acquirement by plaintiff of the Purdy Grant, Stipulation Exhibit No. 7, no water reserved by said grant has been taken out of the pool in the Maumee River on the south side thereof from above said Grand Rapids State Dam but all of such reserved water has been and is being diverted in said pool and taken out by plaintiff on the north side of said river and through said canal to said hydro-electric plant, as shown in paragraph 14 hereof and Stipulation Exhibit No. 25.

16. That upon completion by tby State of Ohio of the respective sections of the Miami & Erie Canal, namely, Miami Canal, Miami Extension Canal and Wabash & Erie Canal, the State of Ohio made water leases and grants to and agreements with persons, firms and corporations along said respective sections for the purpose of supplying water from said respective sections of said canal for hydraulic purposes to industrial plants, hydro-electric plants and for [fol. 76] other industrial purposes, said water being furnished by the State of Ohio for such purposes to such users of such water along the line of said respective sections of said canal under said leases, grants and agreements in consideration of the payment by said users of rentals or other considerations in such amounts and of such character as stipulated and agreed upon to be given by such users to the State of Ohio from time to time throughout the rental periods called for in such leases, grants and agreements, respectively; that similar leases, grants and agreements were made by the State of Ohio with respect to the various sections of the Ohio and other canals in the eastern and central part of Ohio; that said practice was followed with respect to said canals and the various sections thereof from the completion thereof at numerous places where water power was available or could be developed throughout the time said canals were operated for the purposes of navigation and said practice of furnishing water power by the State of Ohio as aforesaid has been continued down to the present time; that such leases, grants and agreements have been made on the Miami & Erie Canal and the waters connected therewith to the number of about —, bringing to Ohio a revenue in the aggregate of about $9,000,000.00, and on said Ohio and other canals and the waters connected therewith to the number of about —, bringing to the State of Ohio a revenue in the aggregate of about $9,000,000.00.

17. The only leases, agreements or grants permitting the taking of water from the Miami & Erie Canal between the point where said canal connects with the Maumee River above and southwesterly from said Grand Rapids dam and Swan Creek in the City of Toledo, are those of the plaintiff, copies of which are Stipulation Exhibits Nos. 1 to 7

inclusive, the lease of The Toledo Grain & Milling Company, copy of which is Stipulation Exhibit No. 10, and the grant and agreement between the State of Ohio and Peter Minor, as shown by Stipulation Exhibits Nos. 8 and 9. The waters used under the Minor grants and agreements, as shown by Stipulation Exhibits Nos. 8 and 9, are taken out of said canal at a point just above Guard Lock, or Lock No. 9, on said canal and are there used to operate a small flour and feed mill situated on the southerly side of said canal and the north bank of the Maumee River, said waters [fol. 77] so used passing from said canal as aforesaid through said mill operating the same and out into the Maumee River.

18. That throughout the time within which the events hereinafter in this paragraph occurred Fred J. Mery was the Mayor, William B. Guitteau was the Director of Service, Frank M. Dotson was the Director of Law and Frank Miller was the Commissioner of the Division of Water of Defendant the City of Toledo, Ohio; defendants Roy E. Davis, Ralph E. Farnsworth and George R. Hoffman were the County Commissioners of Lucas County, Ohio; and John Smith was the Mayor of defendant the Village of Maumee, Ohio. Said persons above named urged a State Senator from Lucas County, Ohio to introduce into the General Assembly of Ohio for passage at the session of that General Assembly which convened the forepart of January, 1927, said Senate Bill No. 48 mentioned in the bill of complaint which afterwards became Amended Senate Bill No. 48; that said State Senator introduced said Bill in said General Assembly in the forepart of said session; that said above named persons, together with many owners of property along said Miami & Erie Canal in the City of Toledo and Village of Maumee, Ohio, continually urged the approval of said Bill, after its said introduction, before the committee of both the Senate and the House of Representatives of said Assembly to which said Bill had been referred for consideration, said State Senator being a member of such committee in said Senate; and in the same manner said persons urged the passage of said Bill by both the Senate and the House of Representatives of said Assembly; that said Bill was passed by both Houses

of said Assembly but was vetoed by the Governor of Ohio whereupon said persons in the manner aforesaid urged the passage of said Bill over the Governor's veto; that said Bill was passed over the Governor's veto, took effect on August 10, 1927 and is found in Volume 112, Ohio Laws, pages 360 to 363 and is the Act the constitutionality of which is questioned in this case; that said persons urging the introduction and passage of said Bill as aforesaid urged Lucas County's two State Senators and its five members of the House of Representatives in said General Assembly to work for and procure the passage of said Bill, and that said State Senators and members of said House of Representatives complied therewith.

[fol. 78] 19. That the bill of complaint in this case may be amended by inserting the figure "4" at the beginning of the last paragraph thereof on page 5 of said bill and that in the ninth line from the top of page 2 of said bill the words "as a village" may be stricken out.

20. The Toledo and Napoleon Road indicated on Stipulation Exhibit No. 25 is otherwise known as "River Road" and is an extension southwesterly along the Maumee River of the streets known as Broadway and Summit Street in Toledo, Ohio.

21. That plaintiff has no means of conveying to said hydro-electric plant, located as shown in Stipulation No. 14 and in Stipulation Exhibit No. 25, water from leases or agreements marked Stipulation Exhibits Nos. 3, 4, 5, 6, 7 and 8 except through said canal and by passing through said canal from the point specified in the aforesaid exhibits along and through said canal to said hydro-electric plant.

22. It is hereby agreed that this stipulation and agreement between the parties plaintiff and defendant on the evidence is only for the purposes of this case in this court and on any review thereof in any reviewing court.

The Maumee Valley Electric Company, by U. E. Denman and Karl N. Burr, Solicitors for Plaintiff. George F. Schessinger, Director of Highways, by Edward C. Turner, Attorney General of Ohio. Albert M. Calland and Joseph A. Godown,

Solicitors for Defendant Schlessinger. City of Toledo, by Geo. W. Ritter, Its Director of Law, and Martin S. Dodd, Its Asst. Director of Law, Solicitors for the City of Toledo. Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, Commissioners of Lucas County, by Leroy W. Hunt, Prosecutor of Lucas County, Solicitor for said Commissioners. Village of Waterville, Village of Maumee, Defendant Villages, by Geo. W. Ritter and Martin S. Dodd, Their Solicitors.

[fol. 79] STIP. EX. 1

Lease of Water Power to Robert J. Law, Trustee

Date March 12, 1895

Rents Payable at Toledo, Ohio, M. & E. Canal

Recorded —— —, ——

By authority of a resolution adopted by the Board of Public Works August 8, 1899, this lease was transferred to George G. Metzger, Trustee.

(Signed) Wm. T. McLean, Sec'y B. P. W.

By authority of a resolution of the Board of Public Works of Ohio passed at its regular monthly meeting held September 11, 1900, this lease was transferred from George G. Metzger, Trustee, to The Maumee Valley Electric Company, and said Company was granted permission to sublet any of the privileges they enjoy under this lease.

(Signed) Wm. T. McLean, Sec'y B. P. W. of Ohio.

[fol. 80] This agreement, made this 12th day of March, 1895, between the State of Ohio, party of the first part, by Frank J. McCulloch, Acting Commissioner of the Board of Public Works thereto duly authorized by law, and by the order of the Board of Public Works made in pursuance thereof, and Robert J. Law, Trustee, party of the second part, Witnesseth: That said party of the first part, in con-

sideration of the rents reserved and the covenants of the party of the second part hereinafter contained and upon the express condition that the party of the second part shall continue during the whole of his term to comply with all and singular the limitations and conditions hereinafter contained, and shall, in every respect, perform all the stipulations of this agreement by said party to be performed, agrees to sell and lease to said party of the second part, for the term of 30 years, from and after the 12th day of March 1895 subject to the restrictions, limitations and conditions herein contained, the use and occupation of all the surplus water of the Miami and Erie Canal between Providence and Toledo not needed for navigation or not now under lease.

The water hereby leased to be taken out of the level of the Miami & Erie Canal at Maumee and to be conveyed to the mills or other hydraulic works from between two regular weirs to be constructed by, and at the expenses of the party of the second part as hereinafter specified.

And the said party of the second part, for and in consideration of the right to the use and occupation of said water, agrees to pay to said State the yearly rent or sum of $500.00, provided the party of the second part shall not be deprived of the use thereof for more than one month in the aggregate, in any one year. And if for the purpose of repairing the Canal, preventing breaches, removing bars, or other obstructions, or making any improvements to the Canal or works connected therewith, or in consequence of breaches or the inadequacy of the supply of water, the party of the second part shall be either partially or wholly deprived of the use of any portion of the water power hereby leased, so as to prevent the operation of any hydraulic works usually propelled by the water power hereby leased, such deduction shall be made from the rent accruing on such por-
[fol. 81] tion of the water power as the said party is so prevented from using, as will bear the same proportion to the yearly rent thereof, as the time during which the said party has been deprived of its use, bears to eleven months; the rent to be paid semi-annually, on the first day of May and November in each and every year, during the continuance of this lease, to the Collector of Canal Tolls, at Toledo, Ohio, or other Agent of the State authorized to receive the same.

And the said party of the second part further agrees to erect, at his own expense, in a good, secure, substantial and workmanlike manner, the regulating weir above mentioned, to be constructed of stone walls and plates of wood, with a substantial iron bar securely bolted on the top thereof, agreeably to a plan to be furnished by the acting Commissioner or Engineer employed on any adjoining part of the Canal, and under the direction and subject to the inspection of such Acting Commissioner or Engineer; the weir over which the water is drawn from the Canal to be so placed and formed that the top of the weir shall not be more than six inches below the level, at which it shall be designed to sustain the surface of the water in that part of the Canal from whence the water is to be drawn, and the other or second weir to be so placed and formed that the top thereof will be at least one inch lower than the top of the weir over which the water is drawn from the canal; and of such length and otherwise so constructed that a uniform quantity of water will flow from the upper to the lower levels of the Canal, whether the hydraulic works are in operation or not.

And it is further expressly agreed that the party of the second part shall not, for any purpose or in any manner whatever, obstruct the equal and regular flow of water from one level of the Canal to another, nor increase the flow, nor cause the water, or any part thereof to flow out of the Canal except as herein provided; nor shall the party of the second part permit any of said acts or things to be done by any person or persons employed in or about the mills or hydraulic works propelled by water hereby leased. And said party of the second part shall be considered and held responsible for keeping the regulating weirs above described constantly in good repair and free from all obstructions; and a failure to do so or an interference with the flow of water on their [fol. 82] part, or on the part of any person employed in or about said mills or hydraulic works aforesaid, shall be adjudged a forfeiture of this lease, and of all the rights and privileges of the said party growing out of this agreement.

And said party of the second part further agrees to construct the head race, tail race, and other works and devices connected with the use of water hereby leased.

And the said party of the second part further agrees, during the continuance of this lease, to keep constantly in good

order and repair the weir, head and tail race, and all other works and devices connected with the use of the water hereby leased, so far as the same shall be necessary to secure the regular and uniform flow of water from the upper to the lower levels, and also to prevent any breach in the bank, the formation of a bar or other injury to the Canal, or impediment to the navigation thereof; and if, nevertheless, any such breach, bar, or other injury or impediment should occur in consequence of any of said works not being faithfully and substantially constructed, or being suffered to be out of repair, then said party of the second part shall, on being notified thereof by said Acting Commissioner, Engineer, or other proper Agent of the State, immediately repair said breach or other injury; or if such Agent of the State shall cause the same to be done, (which he is hereby authorized at his option to do,) then said party of the second part shall pay to said Agent all necessary expenses incurred in repairing such breach or other injury, on demand.

It is expressly understood and agreed, by and between the parties, that for the purpose of preventing or repairing breaches, removing bars or other obstructions to the navigation of the Canal, or for the purpose of making any improvements in the Canal, or the works or devices connected therewith, any authorized Agent of the party of the first part, may cause the water to be drawn, either partially or wholly out of the Canal, and to remain so drawn out so long as may be necessary for any of the aforesaid purposes; and the said party of the second part shall not be entitled to any deduction from the rent hereby made payable, unless said party shall thereby be deprived of the use of the water for [fol. 83] more than one month in any one year; and the party of the first part reserves the right to resume, at any time, the use of the water hereby leased, whenever the same shall become necessary for the purpoes of navigation, and to continue the use thereof so long as the same shall be necessary for the purpose aforesaid; and if it shall become necessary for the party of the first part to resume the use of so great a portion of the water hereby leased, or of the whole thereof for so great a portion of the time as to defeat the object of this lease, by destroying the value of the privilege, (which fact shall be determined by three judicious, disinterested freeholders, one to be chosen by the Acting Com-

missioner, or other authorized Agent of the State, one by the party of the second part, and the third by the two thus chosen,) then the party of the second part shall be from such time absolved from all further liabilities growing — of this agreement.

And it is further understood and agreed, that at the expiration of this agreement the party of the second part shall be entitled to a renewal of the lease, for a like term of years, for such annual rent as may be offered by the highest responsible bidder, who shall also agree to purchase of said party of the second part, all permanent and valuable buildings necessarily erected by said party for the convenient use of the water power hereby leased, at such price as such buildings shall be adjudged to be worth by three judicious, disinterested freeholders, to be chosen as hereinbefore specified; provided, such buildings shall be erected on land belonging to the State, or land which can be purchased by said bidder at a reasonable price, to be determined by said appraisers. And if no such bid shall be made on the terms aforesaid at a higher rent than is herein specified, said party shall be entitled to such renewal on the terms of this lease.

And said party of the first part, in consideration of the rents and agreements hereinbefore specified, further agrees to lease to the party of the second part, upon the same conditions, and subject to the same limitations and restrictions herein contained, all that certain piece or parcel of land, situate in Maumee in Lucas County, Ohio, butted, bounded, and described as follows:

[fol. 84] Beginning at the easterly side of River Tract No. Twenty-two in the 12 mile square Reserve at the foot of the rapids of the Miami of Lake Erie, in the South margin of the Wabash (now Miami and Erie) canal at the water edge at any point between the West line of Forrer Street and the East line of Wolcott's Basin, in the said Wolcott's Addition to Miami City and running from thence southerly along and near the West line of said Forrer Street, to the Maumee River on the bank and along the margin thereof, on River tracts numbers 21 or 22, hereby giving, granting and conveying unto the said lessee all the land in one or both of said River tracts number 21 and 22 sufficient for all the necessary use and occupation of a water power, to

enable the party of the second part to use and enjoy the use of the water power hereby leased, for the like term of 30 years from the twelfth day of March, 1895.

It is further understood and agreed, that said party of the second part shall not sell, assign or transfer his right or interest derived from this agreement, or any part thereof, to any person or persons, unless the assent of some authorized Agent of the State shall be first obtained therefor in writing.

And if, at any time, any installment which shall become due for rent as hereinbefore expressed, shall remain unpaid for one month from the time the same shall fall due, or if the party of the second part shall, in any respect, fail to fulfill and perform all the engagements of said party hereinbefore expressed, or shall do, or permit to be done, any act or thing hereby prohibited, or shall, in any respect, violate this agreement, then, and in either case, all the rights and privileges derivable to said party from this agreement, shall from the time of such failure or violation cease and determine; and any authorized Agent of the State or lessee under said State, shall have full right and power to enter upon and take possession of the premises, and resume all the rights and privileges hereby granted to the party of the second part; and said party of the second part shall moreover be liable for all damages consequent upon such violation of this agreement.

The land hereby described and leased to the said party of [fol. 85] the second part is the same tract conveyed by James Wolcott and wife on the 10th day of November, 1845 and recorded in Volume 12, pages 615 and 617 inclusive of the Lucas County Ohio Records of deeds and also Recorded in Volume 1, pages 384 and 385 of Deeds and Leases of the State Board of Public Works. The payments of rent to commence November 1st, 1895, or from date of use of water previous thereto.

In testimony whereof, The parties executed this agreement the day and year first above written.

(Sgd.) E. L. Lyburger. (Seal.) (Sgd.) Chas. E. Groce. (Seal.) (Sgd.) Frank J. McColloch. (Seal.) (Sgd.) Robert L. Law, Trustee. (Seal.)

Signed, sealed and delivered in presence of (Signed) Wm. T. McLean, as to B. P. W. (Signed) Geo. K. Detwiler, George D. Palmer, Jr.

By authority of a resolution passed by the Board of Public Works on May 14th, 1895 this lease was transferred by Robt. J. Law, Trustee, to Wm. B. Taylor, Trustee.

(Sgd.) Wm. T. McLean, Secy. Bd. Pub. Wks.

[fol. 86] STIP. EX. 2

This agreement and supplementary lease, made this — day of December, A. D. 1910, by and between the State of Orio, by George W. Watkins, B. W. Baldwin and William Kirtley, Jr., members of the Board of Public Works, duly authorized in the premises, hereinafter called the "State" and The Maumee Valley Electric Company, a corporation organized and existing under the laws of the State of Ohio, hereinafter called the "Company," Witnesseth:

That whereas, the Company is the duly authorized assignee of a certain lease between the State of Ohio, and R. J. Law, trustee, dated March 12, 1895, and running for a period of thirty (30) years from that date, under the terms of which lease the State has sold and leased to said Company all the surplus water of the Miami & Erie Canal between Providence and Toledo, not needed for navigation, and not under lease at the date last before mentioned; and

Whereas, the parties hereto have mutually agreed that the service rendered under the terms of said lease is unsatisfactory, and that the compensation named in said lease is inadequate for proper and satisfactory service; and

Whereas, to increase the flow of water in said canal between the village of Grand Rapids and the Company's weir, with the consent of the state, the Company has undertaken, at its own proper expense, to remove the rock bars in the canal near the village of Waterville, and also to remove other obstructions from the canal on the eighteen mile level between Grand Rapids and Lock No. 45, and to raise the banks of said canal in certain places; and

Whereas, the Company is willing to pay the expense of a proper patrol system from the village of Grand Rapids to Lock No. 45, in order to prevent breaks in the canal banks, repair leaks, remove logs, brush and other impediments to the free and even flow of water in the canal; and

Whereas, the Company is further willing to pay an increased rental for the use of the water granted by the terms [fol. 87] of said lease hereinbefore described, provided a

high water level is at all times maintained in said portion of said canal.

Now, therefore, for and in consideration of the foregoing and of the covenants on the part of each of said parties to be performed as hereinafter set forth, said parties have, and by these presents do mutually agree as follows:

First. The State agrees to cause to be let into the eighteen miles level of said Miami & Erie Canal at Grand Rapids, from the pool above, waters of the Maumee River equal to the safe capacity of said canal, for use for hydraulic purposes at the works of the Company, located near Maumee, and to cause as large steady and even flow of such waters as may be practicable, except in cases of unavoidable accident or public necessity, all consistent with the rights of navigation upon said canal.

Second. The State agrees to require its superintendent of canals for the northern division of said Miami & Erie Canal, to appoint three (3) patrolmen, who shall be paid for their services by said company, and who shall be required to patrol said canal banks between the Village of Grand Rapids and Lock No. 45, to repair breaks in the canal banks, stop leaks, remove logs, brush and other impediments to the free and even flow of water.

Third. The State does sell and lease unto the Company all of the increased water passing over the weir of said Company, provided for by this agreement.

Fourth. The Company agrees to maintain its weir at all times, at the level at which the same is now constructed or, on the order of the Board of Public orWks, at such level as said Board may hereafter require.

Fifth. The Company further agrees to complete the excavation of the rock bars in the canal near Waterville, as well as the removal of all other obstructions in said canal on the eighteen mile level, and to raise the banks thereof, with all possible diligence, and at its own proper expense.

Sixth. The Company further agrees to pay the compensation of the three (3) patrolmen to be appointed by the State, at a daily wage of not less than One Dollar and twenty-five cents ($1.25).

[fol. 88] Seventh. The Company further agrees to pay to the State the following sums in addition to the sums required to be paid under the terms of said lease dated March 12th, 1895, hereinbefore mentioned, namely:—Fifteen Hundred Dollars ($1500.00) per annum for the rest of the period of said lease of March 12, 1895, in semi-annual installments of Seven Hundred and Fifty ($750.00) Dollars each, beginning on the 1st day of May, 1911. To pay to the State in addition to the sums hereinbefore mentioned, the sum of Three Hundred and Seventy-five ($375.00) Dollars per quarter, beginning on the 10th day of April, 1911, for each three (3) months of continous hydraulic service rendered by the State to the Company, under the terms of said lease of March 12, 1895, and this supplementary agreement, during which time a flow of water to the depth of six (6) inches over the top of the Company's weir shall be maintained without interruption continuing longer than six (6) consecutive hours. Proof of such interruption may be made by any officer of the Company and at least one (1) other disinterested citizen having knowledge of the facts.

Eighth. All payments except premium payments for uninterrupted service, shall be made subject to all of the provisions specified in said lease of March 12, 1895.

Ninth. This agreement shall continue and be in force until the 12th day of March, 1925, unless sooner terminated by default on the part of the company.

Tenth. A cancellation of said lease of March 12, 1895, for any cause whatsoever, shall work a cancellation of all the obligations on this supplementary agreement.

In witness wherof, the parties hereto have executed this agreement the day and year first above written.

(Signed) Geo. W. Watkins, B. W. Baldwin, Wm. Kirtley, Jr., Members of the Board of Public Works of the State of Ohio. The Maumee Valley Electric Company, by (Signed) J. M. Ashley, President.

I hereby certify the above to be a correct copy.

(Signed) J. M. Ashley.

[fol. 89] STIP. EX. 3

Lease of Water Power from the State of Ohio to Thos. W. Studer

The Maumee Valley Electric Co. (by Transfer)

[fol. 90] This agreement, made this 13th day of November, 1906, between the State of Ohio, party of the first part, by the Board of Public Works thereto duly authorized by law, made in pursuance thereof, and Thomas W. Studer, party of the second part,

Witnesseth: That said party of the first part, in consideration of the rents reserved and the covenants of the party of the second part hereinafter contained and upon the express condition that the party of the second part shall continue during the whole of his term to comply with all and singular the limitations and conditions hereinafter contained, and shall, in every respect, perform all the stipulations of this agrement by said party to be performed, agrees to sell and lease to said party of the second part, for the term of thirty years, from and after the first day of November, 1906, subject to the restrictions, limitations and conditions herein contained, the use and occupation of twenty-one hundred cubic feet of water per minute to be used in a grist mill and electric power plant or other machinery which may be approved by the Board of Public Works, the water hereby leased to be taken out of the level of the Miami & Erie Canal, Waterville, Ohio, and to be conveyed to the mills or other hydraulic works over a regulating weir, to be constructed by and at the expense of the party of the second part as hereinafter specified.

And the said party of the second part, for and in consideration of the right to the use and occupation of said water, agrees to pay to said state the yearly rent or sum of four hundred and fifty ($450.00) dollars provided the party of the second part shall not be deprived of the use thereof for more than one month in the aggregate, in any one year. And if for the purpose of repairing the Canal, preventing breaches, removing bars, or other obstructions, or making any improvements to the Canal or works connected therewith, or in consequence of breaches or the in-

adequacy of the supply of water, the party of the second part shall be either partially or wholly deprived of the use of any portion of the water power hereby leased, so as to prevent the operation of any hydraulic works usually propelled by the water power hereby leased, such deduction shall be made from the rent accruing on such portion of [fol. 91] the water power as the said party is so prevented from using, as will bear the same proportion to the yearly rent thereof, that the excess of time over one month during which said party has been deprived of its use, bears to eleven months, the rent to be paid semi-annually, on the first day of May and November in each and every year, during the continuance of this lease, to the Collector of Canal Tolls, at Toledo, Ohio, or other Agent of the State authorized to receive the same.

And the said party of the second part further agrees to erect, at his own expense, in a good, secure, substantial and workmanlike manner, the regulating weir above mentioned, to be constructed of stone walls and plates of wood, with a substantial iron bar securely bolted on the top thereof, agreeably to a plan to be furnished by the Board of Public Works or Engineer employed on any adjoining part of the Canal, and under the direction and subject to the inspection of the Board of Public Works or such Engineer; the weir over which the water is drawn from the Canal to be so placed and formed that the top of the weir shall not be more than six inches below the level, at which it shall be designed to sustain the surface of the water in that part of the canal from whence the water is to be drawn; and of such length and otherwise so constructed that a uniform quantity of water will flow from the upper to the lower levels of the Canal, whether the hydraulic works are in operation or not.

And said party of the second part further agrees so to construct the head race, tail race, and other works and devices conected with the use of water hereby leased.

And the said party of the second part further agrees, during the continuance of this lease, to keep constantly in good order and repair the weir, head and tail race, and all other works and devices connected with the use of the water hereby leased, so far as the same shall be necessary to secure the regular and uniform flow of water from the

upper to the lower level, and also to prevent any breach in the bank, the formation of a bar or other injury to the Canal, or impediment to the navigation thereof; and if, nevertheless, any such breach, bar, or other injury or impediment should occur in consequence of any of said works [fol. 92] not being faithfully and substantially constructed, or being suffered to be out of repair, then said party of the second part shall, on being notified thereof by said Board of Public Works, Engineer, or other proper Agent of the State, immediately repair said breach or other injury; or if such Agent of the State shall cause the same to be done, (which he is hereby authorized at his option to do), then said party of the second part shall pay to said Agent all necessary expenses incurred in repairing such breach or other injury, on demand.

It is expressly understood and agreed, by and between the parties, that for the purpose of preventing or repairing breaches, removing bars or other obstructions to the navigation of the Canal, or for the purpose of making any improvements in the Canal, or the works or devices connected therewith, any authorized Agent of the party of the first part, may cause the water to be drawn, either partially or wholly out of the Canal, and to remain so drawn out so long as may be necessary for any of the aforesaid purposes; and the said party of the second part shall not be entitled to any deduction from the rent hereby made payable, unless said party shall thereby be deprived of the use of the water for more than one month in any one year; and the party of the first part reserved the right to resume, at any time, the use of the water hereby leased, whenever the same shall become necessary for the purpose of navigation, and to continue the use thereof so long as the same shall be necessary for the purpose aforesaid; and if it shall become necessary for the party of the first part to resume the use of so great a portion of the water hereby leased, or of the whole thereof for so great a portion of the time as to defeat the object of this lease, by destroying the value of the privilege, (which fact shall be determined by three judicious, disinterested freeholders, one to be chosen by the Board of Public Works, or other authorized Agent of the State, one by the party of the Second part, and the third by the two thus chosen,) then the party of the second part shall be from such time ab-

solved from all further liabilities growing — of this agreement.

[fol. 93] And it is further understood and agreed, that at the expiration of this agreement the party of the second part shall be entitled to a renewal of the lease, for a like term of years for such annual rent as may be offered by the highest responsible bidder, who shall also agree to purchase of said party of the second part, all permanent and valuable buildings necessarily erected by said party for the convenient use of the water power hereby leased, at such price as such buildings shall be adjudged to be worth by three judicious, disinterested freeholders, to be chosen as hereinbefore specified; provided, such buildings shall be erected on land belonging to the State, or land which can be purchased by said bidder at a reasonable price, to be determined by said appraisers. And if no such bid shall be made on the terms aforesaid at a higher rent than is herein specified, said party shall be entitled to such renewal on the terms of this lease.

It is further understood and agreed, that said party of the second part shall not sell, assign or transfer his right or interest derived from this agreement, or any part thereof, to any person or persons, unless the assent of some authorized Agent of the State shall be first obtained therefor in writing.

And if, at any time, any installment which shall become due for rent as hereinbefore expressed, shall remain unpaid for one month from the time the same shall fall due, or if the party of the second part shall, in any respect, fail to fulfill and perform all the engagements of said party hereinbefore expressed, or shall do, or permit to be done, any act or thing hereby prohibited, or shall, in any respect, violate this agreement, then, and in either case, all the rights and privileges derivable to said party from this agreement, shall from the time of such failure or violation cease and determine; and any authorized Agent of the State or lessee under said State, shall have full right and power to enter upon and take possession of the premises, and resume all the rights and privileges hereby granted to the party of the second part; and said party of the second part shall moreover be liable for all damages consequent upon such violation of this agreement.

[fol. 94] And it is further understood and agreed, that the Board of Public Works, Engineer, or any other authorized Agent of the State, may at any time, enter upon the premises hereby leased, to construct and put in a gauge, of such size as will measure the water leased, in such manner and place as may be deemed advisable within the head race or fore-bay—the party of the second part to be at the expense of furnishing and putting in the water gauge.

This lease is made in lieu of one made to the said second party September 13th, 1904, which lease is hereby cancelled and annulled.

In testimony whereof, The parties executed this agreement the day and year first above written.

Signed, Sealed and Delivered in presence of

George H. Watkins (Seal), W. Kirtley, Jr. (Seal), Members of Board. Thomas W. Studer, Lessee.

In case of assignment of the foregoing lease, the following form must be filled up and signed by the several parties, to-wit:

Fremont, Ohio, October 22, 1909.

We, and each of us, do hereby agree that in consideration of one dollar I do hereby assign and does hereby assign, sell, and convey to Luther Gibbs, his heirs and assigns, all his right, title and interest in and to the foregoing lease of water power and lands, together with the appurtenances belonging to the same, subject to all the stipulations, restrictions, and limitations in said lease provided. And said Luther Gibbs hereby and herein agrees to assume all the responsibilities and obligations imposed by said lease upon said Thomas W. Studer or the original party of the second part to said contract of lease.

Thomas W. Studer. (L. S.)

Office of the State Board of Public Works, Columbus, Ohio

January 11th, 1910.

By resolution adopted by the Board of Public Works on the 11th day of January, 1910, the within lease was assigned to Luther Gibbs of Fremont, Ohio.

Charles W. Diehl, Secretary.

[fol. 95] Fremont, Ohio, July 17th, 1912.

For a valuable consideration, I hereby sell, assign and transfer all my right, title and interest in and to the within lease and privilege to Mary Serrick.

Luther Gibbs.

Columbus, Ohio, Oct. 8th, 1912.

By resolution of the Board of Public Works passed on the 8th day of October, 1912, the above assignment was approved.

Charles W. Diehl, Secretary.

Toledo, Ohio, Nov. 24, 1913.

For One Dollar ($1.00) and other valuable considerations, to me in hand paid, the receipt whereof is hereby acknowledged, I, Mary Serrick, hereby sell, transfer and assign to The Maumee Valley Electric Company, from whom said consideration was received, all my right, title and interest in and to the within Lease of Water Power and all the privileges therein mentioned, and I hereby request and authorize the Superintendent of Public Works of Ohio to transfer and record this assignment upon the records of the Department of Public Works of Ohio.

Mary Serrick.

Columbus, Ohio, Dec. 11, 1913.

The above transfer is hereby approved.

John S. Miller, Superintendent of Public Works.

Witnessed by Carl J. Lindecker, Charles H. Hoffman.

[fol. 96] Stip. Ex. 4

This agreement, Made this Eighth day of April, 1903, between the State of Ohio, party of the first part, by the Board of Public Works thereto duly authorized by law, made in pursuance thereof, and A. C. Tryon, party of the second part, Witnesseth:

That said party of the first part, in consideration of the rents reserved and the covenants of the party of the second

part hereinafter contained and upon the express condition that the party of the second part shall continue during the whole of his term to comply with all and singular the limitations and conditions hereinafter contained, and shall, in every respect, perform all the stipulations of this agreement by said party to be performed, agrees to sell and lease to said party of the second part, for the term of 30 years, from and after the first day of May, 1903, subject to the restrictions, limitations and conditions herein contained, the use and occupation of a water power in Maumee City, said privilege to consist in the use of the water to which Reynolds and Browns are entitled to at their mill—the quantity being (2,050) two thousand fifty cubic feet per minute. The said water to be used after passing the mill of Mitchell and Brown and the mill of the South Toledo Paper Company and will be used at the third fall on the same race. The water hereby leased to be taken out of the level of the Miami & Erie Canal in Maumee City, and to be conveyed to the mills or other hydraulic works over a regulating weir, to be constructed by, and at the expense of the party of the second part as hereinafter specified.

And the said party of the second part, for and in consideration of the right to the use and occupation of said water, agrees to pay to said State the yearly rent or sum of $300 in advance provided the party of the second part shall not be deprived of the use thereof for more than one month in the aggregate, in any one year. And if for the purpose of repairing the Canal, preventing breaches, removing bars, or other obstructions, or making any improvements to the Canal or works connected therewith, or in consequence of breaches or the inadequacy of the supply of water, the party of the second part shall be either partially or wholly deprived of the use of any portion of the water power hereby leased, so as to prevent the operation of any dydraulic works usually propelled by the water power hereby leased, such deduction shall be made from the rent accruing on such portion of the water power as the said party is so prevented from using, as will bear the same proportion to the yearly rent thereof, as the time during which the said party has been deprived of its use, bears to eleven months; the rent to be paid semi-annually on the first day of May and November in each and every

year, during the continuance of this lease, to the Collector of Canal Tolls, at Toledo, Ohio, or other Agent of the State authorized to receive the same.

And the said party of the second part further agrees to erect, at his own expense, in a good, secure, substantial and workmanlike manner, the regulating weir above mentioned, to be constructed of stone walls and plates of wood, with a substantial iron bar securely bolted on the top thereof, agreeably to a plan to be furnished by the Board of Public Works or Engineer employed on any adjoining part of the Canal, and under the direction and subject to the inspection of the Board of Public Works or such Engineer; the weir over which the water is drawn from the Canal to be so placed and formed that the top of the weir shall not be more than six inches below the level, at which it shall be designed to sustain the surface of the water in the part of the Canal from whence the water is to be drawn; and of such length and otherwise so constructed that a uniform quantity of water will flow from the upper to the lower levels of the Canal, whether the hydraulic works are in operation or not.

And it is further expressly agreed that the party of the second part shall not, for any purpose or in any manner whatever, obstruct the equal and regular flow of water from one level of the Canal to another, nor increase the [fol. 97] flow, nor cause the water, or any part thereof to flow out of the Canal; nor shall the party of the second part permit any of said acts or things to be done by any person or persons employed in or about the mills or hydraulic works propelled by water hereby leased. And said party of the second part shall be considered and held responsible for keeping the regulating weirs above described constantly in good repair and free from all obstructions; and a failure to do so or an interference with the flow of water on their part, or on the part of any person employed in or about said mills or hydraulic works aforesaid, shall be adjudged a forfeiture of this lease, and of all the rights and privileges of the said party growing out of this agreement.

And said party of the second part further agrees so to construct the head race, tail race, and other works and devices connected with the use of water hereby leased, that

said water will, at all times, return into the Canal, after being used for hydraulic purposes, at some convenient and proper place to be designated therefor by said Board of Public Works, Engineer or other authorized Agent of the State on the level next below in such manner as not to carry deposit into the Canal, nor obstruct the navigation thereof; and also that a regular and uniform quantity of water may, at all times, flow from the upper to the lower levels of the Canal.

And the said party of the second part further agrees, during the continuance of this lease, to keep constantly in good order and repair the weir, head and tail race, and all other works and devices connected with the use of the water hereby leased, so far as the same shall be necessary to secure the regular and uniform flow of water from the upper to the lower levels, and also to prevent any breach in the bank, the formation of a bar or other injury to the Canal, or impediment to the navigation thereof; and if, nevertheless, any such breach, bar, or other injury or impediment should occur in consequence of any of said works not being faithfully and substantially constructed, or being suffered to be out of repair, then said party of the second part shall, on being notified thereof by said Board of Public Works, Engineer, or other proper Agent of the State, immediately repair said breach or other injury; or if such Agent of the State shall cause the same to be done, (which he is hereby authorized at his option to do), then said party of the second part shall pay to said Agent all necessary expenses incurred in repairing such breach or other injury, on demand.

It is expressly understood and agreed, by and between the parties, that for the purpose of preventing or repairing breaches, removing bars or other obstructions to the navigation of the Canal, or for the purpose of making any improvements in the Canal, or the works or devices connected therewith, any authorized Agent of the party of the first part, may cause the water to be drawn, either partially or wholly out of the Canal, and to remain so drawn out so long as may be necessary for any of the aforesaid purposes; and the said party of the second part shall not be entitled to any deduction from the rent hereby made

payable, unless said party shall thereby be deprived of the use of the water for more than one month in any one year; and the party of the first part reserves the right to resume, at any time, the use of the water hereby leased, whenever the same shall become necessary for the purposes of navigation, and to continue the use thereof so long as the same shall be necessary for the purpose aforesaid; and if it shall become necessary for the party of the first part to resume the use of so great a portion of the water hereby leased, or of the whole thereof for so great a portion of the time as to defeat the object of this lease, by destroying the value of the privelege, (which fact shall be determind by three judicious, disinterested freeholders, one to be chosen by the Board of Public Works, or other authorized Agent of the State, one by the party of the second part, and the third by the two thus chosen,) then the party of the second part shall be from such time absolved from all further liabilities growing of this agreement.

And it is further understood and agreed, that at the ex- [fol. 98] piration of this agrement the party of the second part shall be entitled to a renewal of the lease, for a like term of years, for such annual rent as may be offered by the highest responsible bidder, who shall also agree to purchase of said party of the second part, all permanent and valuable buildings necessarily erected by said party for the convenient use of the water power hereby leased, at such price as such buildings shall be adjudged to be worth by three judicious, disinterested freeholders, to be chosen as hereinbefore specified; provided, such buildings shall be erected on land belonging to the State, or land which can be purchased by said bidder at a reasonable price, to be determined by said appraisers. And if no such bid shall be made on the terms aforesaid at a higher rent than is herein specified, said party shall be entitled to such renewal on the terms of this lease.

And it is further understood and agreed, that the water power hereby leased, shall not be used to drive or propel any saw mill, or other machinery or other works, from which saw dust, chips or other rubbish will be likely to be carried, thrown, or floated into the Canal, so as to form bars or other obstructions to the navigation in the Canal, or to clog the gates, waste weirs or regulating weirs, or

otherwise injure or obstruct the same. And the party of the second part shall, at all times, be bound to keep the Canal clear of all rubbish or other obstruction consequent, in any manner, on the use of the water hereby leased, or of the works or machinery erected therefor.

And said party of the first part, in consideration of the rents and agreements hereinbefore specified, further agrees to lease to the party of the second part, upon the same conditions, and subject to the same limitations and restrictions herein contained, all that certain piece or parcel of land, situate.

* * * * * * *

It is understood and agreed between the parties that the party of the first part hereby leases for the term of 30 years from and after the first day of May, 1903 all the State land abutting the powers hereby leased and *not* included in the lease to the Paper Mill and below it on the side cut in Maumee City which belongs to the State, and the party of the second part agrees to furnish at his own expense all further and necessary land that may be required for use the power hereby leased, to enable the party of the second part to use and enjoy the use of the water power hereby leased, for the like term of 30 years from the first day of May, 1903.

It is further understood and agreed, that said party of the second part shall not sell, assign or transfer his right or interest derived from this agreement, or any part thereof, to any person or persons, unless the assent of some authorized Agent of the State shall be first obtained therefor in writing.

And if, at any time, any installment which shall become due for rent as hereinbefore expressed, shall remain unpaid for one month from the time the same shall fall due, or if the party of the second part shall, in any respect, fail to fulfill and perform all the engagements of said party hereinbefore expressed, or shall do, or permit to be done, any act or thing hereby prohibited, or shall, in any respect, violate this agreement, then, and in either case, all the rights and privileges derivable to said party from this agreement, shall from the time of such failure or violation cease and determine; and any authorized Agent of the State or lessee under said State, shall have full right and power to enter

upon and take possession of the premises, and resume all the rights and privileges hereby granted to the party of the second part; and said party of the second part shall moreover be liable for all damages consequent upon such violation of this agreement.

And it is further understood and agreed, that the Board of Public Works, Engineer, or any other authorized Agent of the State, may at any time, enter upon the premises hereby leased, to construct and put in a guage, of such size as will measure the water leased, in such manner and place as may be deemed advisable within the head race or forebay—the party of the second part to be at the expense of [fol. 99] furnishing and putting in the water gauge.

This lease is made in lieu of one granted the said second party for 30 years from November 1st, 1899, which lease is hereby annulled and cancelled.

In testimony whereof, The parties executed this agreement the day and year first above written.

Signed, sealed and delivered in presence of

(Sgd.) W. G. Johnston, (Seal), W. Kirtley, Jr. (Seal), Members of Board. (Sgd.) A. C. Tryon, Lessee.

The Board of Public Works of Ohio at a regular meeting held Tuesday, Sept. 13th, 1904, authorized the transfer of this lease to The Maumee Electric Co. as shown on page 57, Record Book #13.

Witness my hand and the seal of said board this 13th day of October, A. D. 1904.

W. H. McCluitrick, Secy. B. P. Wks. of Ohio. (Seal.)

[fol. 100] STIP. EX. 5

This agreement, Made this eighth day of April, 1903, between the State of Ohio, party of the first part, by the Board of Public Works thereto duly authorized by law, made in pursuance thereof, and The Maumee Paper Company, party of the second part, Witnesseth: That said party of the first part, in consideration of the rents reserved and the covenants of the party of the second part hereinafter contained and upon the express condition that the party of the second

part shall continue during the whole of its term to comply with all and singular the limitations and conditions hereinafter contained, and shall, in every respect, perform all the stipulations of this agreement by said party to be performed, agrees to sell and lease to said party of the second part, for the term of Thirty (30) years, from and after the first day of May, 1903, subject to the restrictions, limitations and conditions herein contained, the use and occupation of a water power in South Toledo. Said privilege to consist in the use of the water to which the mill next above is entitled being two thousand and fifty (2050) cubic feet per minute, and to be used after passing the mill above, this being the second fall from the Miami and Erie canal and to be of equal descent to that at either of other falls on the race, the water hereby leased to be taken out of the level of the Miami and Erie Canal in South Toledo, by way of the next mill above summit, and to be conveyed to the mills or other hydraulic works over a regulating weir, to be constructed by, and at the expense of the party of the second part as hereinafter specified.

And the said party of the second part, for and in consideration of the right to the use and occupation of said water, agree to pay to said State the yearly rent or sum of Four Hundred ($400.00) dollars in advance provided the party of the second part shall not be deprived of the use thereof for more than one month in the aggregate, in any one year. And if for the purpose of repairing the Canal, preventing breaches, removing bars, or other obstructions, or making any improvements to the Canal or works connected therewith, or in consequence of breaches or the inadequacy of the supply of water, the party of the second part shall be either partially or wholly deprived of the use of any portion of the water power hereby leased, so as to [fol. 101] prevent the operation of any hydraulic works usually propelled by the water power hereby leased, such deduction shall be made from the rent accruing on such portion of the water power as the said party is so prevented from using, as will bear the same proportion to the yearly rent thereof, as the time during which the said party has been deprived of its use, bears to eleven months; the rent to be paid semi-annually on the first day of May and November in each and every year, during the continuance of this

lease, to the Collector of Canal Tolls, at Toledo, Ohio, or other Agent of the State authorized to receive the same.

And the said party of the second part further agrees to erect, at his own expense, in a good, secure, substantial and workmanlike manner, the regulating weir above mentioned, to be constructed of stone walls and plates of wood, with a substantial iron bar securely bolted on the top thereof, agreeably to a plan to be furnished by the Board of Public Works or Engineer employed on any adjoining part of the canal, and under the direction and subject to the inspection of the Board of Public Works or such Engineer; the weir over which the water is drawn from the Canal to be so placed and formed that the top of the weir shall not be more than six inches below the level, at which it shall be designated to sustain the surface of the water in that part of the Canal from whence the water is to be drawn; and of such length and otherwise so constructed that a uniform quantity of water will flow from the upper to the lower levels of the Canal, whether the hydraulic works are in operation or not.

And it is further expressly agreed that the party of the second part shall not, for any purpose or in any manner whatever, obstruct the equal and regular flow of water from one level of the Canal to another, nor increase the flow, nor cause the water, or any part thereof to flow out of the Canal; nor shall the party of the second part permit any of said acts or things to be done by any person or persons employed in or about the mills or hydraulic works propelled by water hereby leased. And said party of the [fol. 102] second part shall be considered and held responsible for keeping the regulating weirs above described constantly in good repair and free from all obstructions; and a failure to do so or an interference with the flow of water on their part, or on the part of any person employed in or about said mills or hydraulic works aforesaid, shall be adjudged a forfeiture of this lease, and of all the rights and privileges of the said party growing out of this agreement.

And said party of the second part further agrees so to construct the head race, tail race, and other works and devices connected with the use of water hereby leased, that said water will at all times, return into the Canal, after

being used for hydraulic purposes, at some convenient and proper place to be designated therefor by said Board of Public Works, Engineer or other authorized Agent of the State, on the level next below Lock No. — in such manner as not to carry deposit into the Canal, nor obstruct the navigation thereof; and also that a regular and uniform quantity of water may, at all times, flow from the upper to the lower levels of the Canal.

And the said party of the second part further agrees, during the continuance of this lease, to keep constantly in good order and repair the weir, head and tail race, and all other works and devices connected with the use of the water hereby leased, so far as the same shall be necessary to secure the regular and uniform flow of water from the upper to the lower levels, and also to prevent any breach in the bank, the formation of a bar or other injury to the Canal, or impediment to the navigation thereof; and if, nevertheless, any such breach, bar or other injury or impediment should occur in consequence of any of said works not being faithfully and substantially constructed, or being suffered to be out of repair, then said party of the second part shall, on being notified thereof by said Board of Public Works, Engineer, or other proper Agent of the State, immediately repair said breach or other injury; or if such Agent of the State shall cause the same to be done (which he is hereby [fol. 103] authorized at his option to do,) then said party of the second part shall pay to said Agent all necessary expenses incurred in repairing such breach or other injury on demand.

It is expressly understood and agreed, by and between the parties, that for the purpose of preventing or repairing breaches, removing bars or other obstructions to the navigation of the Canal, or for the purpose of making any improvements in the Canal, or the works or devices connected therewith, any authorized Agent of the party of the first part, may cause the water to be drawn, either partially or wholly out of the Canal, and to remain so drawn out so long as may be necessary for any of the aforesaid purposes; and the said party of the second part shall not be entitled to any deduction from the rent hereby made payable, unless said party shall thereby be deprived of the use of the water for more than one month in any one year; and the party of the

first part reserves the right to resume, at any time, the use of the water hereby leased, whenever the same shall become necessary for the purposes of navigation, and to continue the use thereof so long as the same shall be necessary for the purpose aforesaid; and if it shall become necessary for the party of the first part to resume the use of so great a portion of the water hereby leased, or of the whole thereof for so great a portion of the time as to defeat the object of this lease, by destroying the value of the privilege, (which fact shall be determined by three judicious, disinterested freeholders, one to be chosen by the Board of Public Works, or other authorized Agent of the State, one by the party of the second part, and the third by the two thus chosen,) then the party of the second part shall be from such time absolved from all further liabilities growing — of this agreement.

And it is further understood and agreed, that at the expiration of this agreement the party of the second part shall be entitled to a renewal of the lease, for a like term of years, for such annual rent as may be offered by the highest responsible bidder, who shall also agree to purchase of said party of the second part, all permanent and valuable buildings necessarily erected by said party for the convenient [fol. 104] use of the water power hereby leased, at such price as such buildings shall be adjudged to be worth by three judicious, disinterested freeholders, to be chosen as hereinbefore specified; provided, such buildings shall be erected on land belonging to the State, or land which can be purchased by said bidder at a reasonable price, to be determined by said appraisers. And if no such bid shall be made on the terms aforesaid at a higher rent than is herein specified, said party shall be entitled to such renewal on the terms of this lease.

And it is further understood and agreed, that the water power hereby leased, shall not be used to drive or propel any saw mill, or other machinery or other works, from which saw dust, chips or other rubbish will be likely to be carried, thrown, or floated into the Canal, so as to form bars or other obstructions to the navigation in the Canal, or to clog the gates, waste weirs or regulating weirs, or otherwise injure or obstruct the same. And the party of the second part shall at all times, be bound to keep the

Canal clear of all rubbish or other obstruction consequent, in any manner, on the use of the water hereby leased, or of the works or machinery erected therefor.

And the said party of the first part, in consideration of the rents and agreements hereinbefore specified, further agrees to lease to the party of the second part, upon the same conditions, and subject to the same limitations and restrictions herein contained, all that certain piece or parcel of land, situate, butted, bounded and described as follows:

It is understood and agreed between the parties that the party of the first part hereby leases for the term of thirty (30) years from the first day of May, 1903, all the land adjoining and abutting the power hereby leased and included in the lease to Stadden and Company and below them and on South Toledo Side Cut, which belongs to the State, and the party of the second part agrees to furnish at their own expense all further and necessary land that may be required for the use of the power hereby leased, to enable the party of the second part to use and enjoy the use of the water power hereby leased, for the like term of [fol. 105] thirty (30) years from the first day of May, 1903.

It is further understood and agreed, that said party of the second part shall not sell, assign or transfer his right or interest derived from this agreement, or any part thereof, to any person or persons, unless the assent of some authorized Agent of the State shall be first obtained therefor in writing.

And if at any time, any installment which shall become due for rent as hereinbefore expressed, shall remain unpaid for one month from the time the same shall fall due, or if the party of the second part shall, in any respect, fail to fulfill and perform all the engagements of said party hereinbefore expressed, or shall do, or permit to be done, any act or thing hereby prohibited, or shall, in any respect, violate this agreement, then, and in either case, all the rights and privileges derivable to said party from this agreement, shall from the time of such failure or violation cease and determine; and any Authorized Agent of the State or lessee under said State, shall have full right and power to enter upon and take possession of the premises, and resume all the rights and privileges hereby

granted to the party of the second part; and said party of the second part shall moreover be liable for all damages consequent upon such violation of this agreement.

And it is further understood and agreed, that the Board of Public Works, Engineer, or any other authorized Agent of the State, may at any time, enter upon the premises hereby leased, to construct and put in a gauge, of such size as will measure the water leased, in such manner and place as may be deemed advisable, within the head race or fore-bay the party of the second part to be at the expense of furnishing and putting in the water gauge.

This lease is made in lieu of one made to the said second party for a term of thirty (30) years, from and after November 1st, 1886, which lease is hereby annulled and cancelled.

In testimony whereof, The parties executed this agreement the day and year first above written.

Signed, Sealed and Delivered in presence of

W. G. Johnston (Seal), W. Kirtley, Jr. (Seal), Members of Board. The Maumee Paper Co., B. S. Boyer, Sec'y, Lessee.

[fol. 106] Assignment

Toledo, Ohio, Sept. 23, 1912.

We, and each of us, do hereby agree, that in consideration of one dollar, the Maumee Electric Company assigns, and does hereby assign, sell, and convey to William H. Sandford, as Trustee for The Valley Light & Power Company, a corporation about to be organized under the laws of the State of Ohio, his heirs and assigns, all its right, title and interest in and to the foregoing lease of water power and lands, dated April 8th, 1903, originally held by The Maumee Paper Company, and covering the use of 2050 cubic feet of water of the Miami & Erie Canal, together with the appurtenances belonging to the same, subject to all the stipulations, restrictions, and limitations in said lease provided. And said William H. Sandford as Trustee, hereby and herein agrees to assume all the responsibilities and obligations imposed by said lease upon said The Maumee Electric Company, or the original party of the second part to said contract of lease, and said Sandford further

agrees to formally assign said lease to said The Valley Light & Power Company immediately upon its incorporation; this assignment being made expressly subject to the approval of the Board of Public Works, to be herein under written.

The Maumee Electric Company, by F. W. Bainbridge, President.

Office of the State Board of Public Works, Columbus, Ohio

September 24, 1912.

By resolution of the Board of Public Works adopted on the 24th day of September, 1912, the within water power lease was assigned to William H. Sandford, as trustee for The Valley Light & Power Company.

Chas. W. Dichl, Sec'y. (Seal.)

[fol. 107] STIP. EX. 6

Lease of Water Power to George K. Detwiler

Dated February 20th, 1901

Rents Payable at Toledo, Ohio, Miami and Erie Canal

[fol. 108] This agreement, made this 20th day of February, 1901, between the State of Ohio, party of the first part, by Frank A. Huffman, Acting Commissioner of the Board of Public Works, thereto duly authorized by law, and by the order of the Board of Public Works made in pursuance thereof, and George K. Detwiler, party of the second part, Witnesseth: That said party of the first part, in consideration of the rents reserved, and the covenants of the party of the second part hereinafter contained, and upon the express condition that the party of the second part shall continue during the whole of his term to comply with all and singular the limitations and conditions hereinafter contained, and shall in every respect perform all the stipulations of this agreement by said party to be performed agrees to sell and lease to said party of the second part, for the term of thirty (30) years, from and after the first

day of May, 1901, subject to the restrictions, limitations and conditions herein contained, the use and occupation of such quantity of water if used at the location of the water power formerly occupied by Robert A. Forsythe and later by Raynor, Seagraves and Company as will produce forty horse-power, which quantity of water is estimated to be eight hundred and thirty-three (833) cubic feet per minute over a fall of thirty-two (32) feet. This being a renewal of lease of water formerly leased at the above named location. The water hereby leased to be taken out of the level of the Miami and Erie Canal next above the Miami Lock at the above named location or such other point as may be agreed upon by the parties herein named or their assigns, and to be conveyed to the mills or hydraulic works from between two regulating weirs, to be constructed by and at the expense of the party of the second party as hereinafter specified.

And the said party of the second part, for and in consideration of the right to the use and occupation of said water, agrees to pay to said State the yearly rent or sum of Three hundred and twenty ($320.00) dollars, in advance, provided the party of the second part shall not be deprived [fol. 109] of the use thereof for more than one month in the aggregate, in any one year. And if for the purpose of repairing the Canal, preventing breaches, removing bars, or other obstructions, or making any improvements to the Canal or works connected therewith, or in consequence of breaches or the inadequacy of the supply of water, the party of the second part shall be either partially or wholly deprived of the use of any portion of the water power hereby leased, so as to prevent the operation of any hydraulic works usually propelled by the water power hereby leased, such deduction shall be made from the rent accruing on such portion of the water power as the said party is so prevented from using, as will bear the same proportion to the yearly rent thereof, as the time during which the said party has been deprived of its use, bears to eleven months; the rent to be paid semi-annually, in advance, on the first day of May and November in each and every year, during the continuance of this lease, to the Collector of Canal Tolls, at Toledo, Ohio, or other Agent of the State authorized to receive the same.

And the said party of the second part further agrees to erect, at his own expense, in a good, secure, substantial and workman-like manner, the regulating weirs above mentioned, to be constructed of stone walls and plates of wood, with a substantial iron bar securely bolted on the top thereof, agreeably to a plan to be furnished by the Acting Commissioner or Engineer employed on any adjoining part of the Canal, and under the direction and subject to the inspection of such Acting Commissioner or Engineer; the weir over which the water is drawn over the Canal to be so placed and formed that the top of the weir shall not be over six inches below the level at which it shall be designated to sustain the surface of the water in that part of the Canal from whence the water is to be drawn; and the other, or second weir, to be so placed and formed that the top thereof will be at least one inch lower than the top of the weir over which the water is drawn from the Canal and of such length and otherwise so constructed that a [fol. 110] uniform quantity of water will flow from the upper to the lower levels of the Canal, whether the hydraulic works are in operation or not.

And it is further expressly agreed that the party of the second part shall not for any purpose or in any manner whatever obstruct the equal and regular flow of water from one level of the Canal to another, nor increase the flow, nor cause the water, or any part thereof, to flow out of the Canal; nor shall the party of the second part permit any of said acts or things to be done by any person or persons employed in or about the mills or hydraulic works propelled by water hereby leased. And said party of the second part shall be considered and held responsible for keeping the regulating weirs above described, constantly in good repair, and free from all obstructions; and a failure to do so, or an interference with the flow of water on their part, or on the part of any person employed in or about said mills or hydraulic works aforesaid, shall be adjudged a forfeiture of this lease, and of all the rights and privileges of the said party growing out of this agreement.

And the said party of the second part further agrees so to construct the head race, tail race, and other works and devices connected with the use of water hereby leased.

And the said party of the second part further agrees, during the continuance of this lease, to keep constantly in good order and repair the weirs, head and tail race, and all other works and devices connected with the use of the water hereby leased, so far as the same shall be necessary to secure the regular and uniform flow of water from the upper to the lower levels, and also to prevent any breach in the bank, and the formation of a bar or other injury to the Canal, or impediment to the navigation thereof; and if, nevertheless, any such breach, bar or other injury or impediment should occur in consequence of any of said works not being faithfully and substantially constructed, or being suffered to be out of repair, then said party of the second part shall, on being notified thereof by said Acting Commissioner, Engineer, or other proper Agent of the State, immediately repair said breach or other injury; or if such [fol. 111] Agent of the State shall cause the same to be done (which he is hereby authorized at his option to do), then said party of the second part shall pay to said Agent all necessary expenses incurred in repairing such breach or other injury on demand.

It is expressly understood and agreed, by and between said parties, that for the purpose of preventing or repairing breaches, removing bars or other obstructions to the navigation of the Canal, or for the purpose of making any improvements in the Canal, or the works or devices connected therewith, any authorized Agent of the party of the first part may cause the water to be drawn, either partially or wholly out of the Canal, and to remain so drawn out so long as may be necessary for any of the aforesaid purposes; and the said party of the second part shall not be entitled to any deduction from the rent hereby made payable, unless said party shall thereby be deprived of the use of the water for more than one month in any one year; and the party of the first part reserves the right to resume at any time the use of the water hereby leased, whenever the same shall become necessary for the purpose of navigation, and to continue the use thereof so long as the same shall be necessary for the purpose aforesaid; and if it shall become necessary for the party of the first part to resume the use of so great a portion of the water hereby leased, or of the

whole thereof for so great a portion of the time as to defeat the object of this lease, by destroying the value of the privilege, (which fact shall be determined by three judicious, disinterested freeholders, one to be chosen by the Acting Commissioner, or other authorized Agent of the State, one by the party of the second part, and the third by the two thus chosen,) then the party of the second part shall be from such time absolved from all further liabilities growing out of this agreement.

And it is further understood and agreed, that at the expiration of this agreement the party of the second part shall be entitled to a renewal of the lease, for a like term of years, for such annual rent as may be offered by the highest responsible bidder, who shall also agree to purchase [fol. 112] of said party of the second part, all permanent and valuable buildings necessarily erected by said party for the convenient use of the water power hereby leased, at such prices as such buildings shall be adjudged to be worth by three judicious, disinterested freeholders, to be chosen as hereinbefore specified; provided such buildings shall be erected on land belonging to the State, or land which can be purchased by said bidder at a reasonable price, to be determined by said appraisers. And if no such bid shall be made on the terms aforesaid at a higher rent than is herein specified, said party shall be entitled to such renewal on the terms of this lease.

And — is further understood and agreed, that the water power hereby leased shall not be used to drive or propel any saw mill, or other machinery or other works, from which saw dust, chips or other rubbish will be likely to be carried, thrown, or floated into the Canal, so as to form bars or other obstructions to the navigation in the Canal, or to clog the gates, waste weirs or regulating weirs, or otherwise injure or obstruct the same. And the party of the second part shall at all times be bound to keep the Canal clear of all rubbish or other obstructions consequent, in any manner, on the use of the water hereby leased, or of the works or machinery erected therefor.

And said party of the second part, in consideration of the rents and agreements hereinbefore specified, further agrees to furnish their own land on which to use the water leased as aforesaid, without any claim for deduction of rent

therefor to enable the party of the second part to use and enjoy the use of the water power hereby leased; for the like term of thirty (30) years from the first day of May, 1901.

It is further understood and agreed, that said party of the second part shall not sell, assign or transfer his right or interest derived from this agreement, or any part thereof, to any person or persons, unless the assent of same authorized Agent of the State shall first be obtained therefor in writing.

[fol. 113] And if at any time, any installment which shall become due for rent as hereinbefore expressed, shall remain unpaid for one month from the time the same shall fall due, or if the party of the second part shall in any respect fail to fulfill and perform all the engagements of said party hereinbefore expressed, or shall do, or permit to be done, any act or thing hereby prohibited, or shall in any respect violate this agreement, then, and in either case, all the rights and privileges derivable to said party from this agreement shall, from the time of such failure or violation, cease and determine; and any authorized Agent of the State, shall have full right and power to enter upon and take possession of the premises and resume all the rights and privileges hereby granted to the party of the second part; and said party of the second part shall moreover be liable for all damages consequent upon such violation of this agreement.

In testimony whereof, The parties executed this agreement the day and year first above written.

(Sgd.) Frank A. Huffman. (Seal.) Geo. K. Detwiler. (Seal.)

Signed, Sealed and Delivered in presence of (Sgd.) Samuel Bachtell.

[fol. 114] For value received I hereby assign, sell and transfer and set over unto The Maumee Valley Electric Company all my right, title and interest in, to, and under the within lease September 20, 1909.

(Sgd.) Geo. K. Detwiler.

In the presence of (Sgd.) Eliot Norton, Edward M. Fries.

Transferred to the Maumee Valley Electric Co.

STATE OF OHIO,
Lucas County, ss:

Be it remembered, that on the 29th day of April, 1910, before me, the subscriber, a Notary Public, in and for said county, personally came Geo. K. Detwiler, the assignor in the foregoing conveyance and acknowledged the signing thereof to be his voluntary act and deed for the purposes therein mentioned.

(Sgd.) George H. Beckwith, Notary Public, Lucas Co., Ohio. (Seal.)

Columbus, Ohio, January 25, 1916.

The transfer of the within lease from George K. Detwiler to The Maumee Valley Electric Company of Toledo, Ohio, dated September 20th, 1909, was this day approved.

(Sgd.) Frank P. Hamer, Superintendent of Public Works.

[fol. 115] STIP. EX. 7

Whereas the State of Ohio in the construction of The Wabash and Erie Canal, has erected a dam across the Maumee River at the head of the Grand Rapid, a short distance above the property and hydraulic power of James Purdy situate on said River, for the purpose of diverting the water into said Canal, as well for navigation as to lease the same for hydraulic purposes, thereby diverting the water from the natural channel and from the hydraulic works of said Purdy; Therefore, this indenture made this eighth day of December, 1845, between the State of Ohio, by her agents the Board of Public Works of the one part and James Purdy of Mansfield, Ohio, of the other part, witnesseth, That the said Purdy for the consideration hereinafter stated, releases and forever quit claims to the State of Ohio, her lessees and assigns, his right and interest as riparian proprietor to the use of the water in the Maumee River flowing over the Grand Rapid, over and alongside of his property in and near the town of Gilead in Wood County, Ohio. That is so much thereof as said State may choose to divert and lease for hydraulic purposes, provided that said Purdy reserves and excepts from said conveyance

and reserves to his own use so much of said water to be taken from the pool of the dam aforesaid through the Canal herein described, in any quantity he may desire, during the seasons that the Canal is not navigable, until the water in the pool sinks to a level fifteen inches below the top of the dam at its present height in the north channel, and during the seasons of navigation until the water in the pool sinks to a level two inches below the top of the dam, and after it has been so drawn off than to use water sufficient to operate six pairs of four and one-half feet mill stones grinding each at the rate of one hundred and fifty bushels of wheat per 24 hours together with all machinery necessary in manufacturing flour until the water in the pool is reduced to a level six inches below the top of the dam and as much below that point as in the opinion of the Resident Engineer or other agent of the State in charge of the work it may be reduced without interruption to the navigation of the pool and Canal at that point with the heaviest ladened boats until the water in the pool is reduced to a level of eight inches below the top of the dam, [fol. 116] and said Purdy for himself and his assigns agrees to close or cause to be closed, any and all issues of water that may be in any mill, factory or other place when the same may be used, and continue the same closed at all times when the water is below the levels specified above, agreeably to the true intent and meaning of the foregoing resolutions. And on his or his assigns failing so to do the right is hereby conceded to the State by her authorized agents to enter and close and fasten the same doing no unnecessary damages to the mechanical structure connected therewith, until the water shall rise to a level entitling him or them to the use of the water as aforesaid.

In consideration of which the State of Ohio agrees to locate and construct a public navigable Canal from the pool aforesaid on the south shore of the river, to the head of said Purdy's Mill race in the town of Gilead and through the same to a point two hundred yards below the head thereof thirty feet wide at the bottom and four and one-half feet deep below the top of the dam, with a descent at the bottom of six inches in the whole length, with a slope in the banks of one foot nine inches base to one foot perpendicular, and construct in said canal a Guard Gate and other fixtures for

the security of the navigation and machinery connected with the Canal; and the said State of Ohio conveys and guarantees to said Purdy and his assigns forever, the right to receive through said Canal and use on his own land, the foregoing reserved quantity of water.

The State further agrees to lease no water on the Wabash and Erie Canal, between said pool and the town of Waterville, in addition to that which is now leased, and none on the Canal on the south side of the River except—What is hereby leased to said Purdy.

It is distinctly understood that this arrangement in no way affects said Purdy's right to damages for water taken by the State for navigation purposes. The foregoing arrangement and agreement is made and entered into by the parties thereto in pursuance of and under the joint resolution of the General Assembly of the State of Ohio, [fol. 117] passed March 12th, 1845, relative to the adjustment of the claim of James Purdy.

By order of the Board.

O. Follett, President. (Seal.) James Purdy. (Seal.)

In the presence of A. S. Galdwell, Wm. P. Reznor.

The State of Ohio,
Franklin County, ss:

Personally appeared before the subscriber, a Justice of the Peace in and for said County, the above named James Purdy and acknowledged the signing and sealing of the foregoing instrument to be his voluntary act and deed for the purpose therein specified.

December 8th, 1845.

A. Patton, J. P.

[fol. 118] Indenture Between the State of Ohio and James Purdy for Water Power

1845

Recorder's Office, Wood County, O.

Rec'd and Recorded March 10, 1846, in Book G, pp. 445 and 446.

P. Seamans, Recorder.

8/paid. Ex.

September 14, 1910.

I hereby certify that the foregoing is a true correct copy of a copy of the original certified by Charles W. Diehl, Secretary of State Board of Public Works, certification dated Columbus, Ohio, January 7th, 1910.

Henry C. Meyer, Notary Public, Kings County, New York. Certificate filed in N. Y. County.

[fol. 119] Stip. Ex. 8

Lease

State of Ohio

to

Peter Minor

Recorded in Record of Deeds and Leases M. & E. Canal, Office Ohio State B. P. W.

This agreement made this first day of September, A. D. 1842, between the State of Ohio, party of the first part, by R. Dickinson, Acting Commissioner and member of the Board of Public Works, thereto duly authorized by law, and by the order of the said Board made in pursuance thereof, and Peter Minor of the County of Lucas, and State aforesaid, party of the second part, Witnesseth: That said party of the first part, for and in consideration of the releases, quit claims, and covenants of the party of the second part, hereinafter contained and upon the express condition that the party of the second part shall continue, at all times, and forever, hereafter to comply with all and singular, the limitations, conditions and covenants hereinafter contained, and shall in every respect perform all the stipulations of this agreement by said party to be performed: Agrees to sell and convey, and does by these presents sell and convey to the said party of the second part, his heirs and assigns forever; subject to the limitations and conditions herein contained, a sufficient quantity of water properly applied, to propel eight pairs of four and a half feet mill stones,

with all the labor saving machinery necessary for the manufacture of superfine flour, to be applied at all seasons of the year; except when otherwise necessary for the navigation of the canal, or when breaches occur, repairs become necessary and other unavoidable causes prevent; provided that nothing herein contained shall hold the State of Ohio responsible to furnish the above amount of water or any part thereof to the said party of the second part, to the damage and injury of mill owners and proprietors of water power on the Maumee River at, opposite and below the towns of Providence and Gilead.

The water hereby leased for six of the said pairs of mill stones and their appertaining machinery, is to be taken from the Wabash and Erie Canal at and immediately above the Guard Lock, being Lock No. Nine, on said Canal and near the town of Providence on the North side of said Canal, by means of suitable regulating Gates, and to be discharged into the Canal below said Guard Lock, by means [fol. 120] of a suitable regulating weir, to be constructed in a safe, substantial and workmanlike manner, by and at the expense of the party of the first part, as hereinafter specified.

The water for the remaining two pairs of mill stones, and their appertaining machinery, is to be taken from the said Canal on its South side; and from the level immediately above said Guard Lock by means of a regulating weir, to be constructed by and at the expense of the party of the second part, as hereinafter specified.

And the said party of the second part, for and in consideration of the right to the use and occupation of said water, leased and conveyed as aforesaid, hereby releases, conveys and forever quit claims to the State of Ohio, and to her assigns forever, all right, title and interest, claim and demand of every kind whatever, against said State of Ohio, for the use and occupation of the water from the Maumee River for the occupation of all lands used and appropriated in the construction of the Wabash and Erie Canal and its appurtenances, for the occupation of all mill sites of the party of the second part, and for the destruction or injury of and to all mills, dams and mill races, and all other property either personal or real, which has been damaged, injured or destroyed in consequence of the construction of the said

Wabash and Erie Canal; excepting only the right to claim and receive an assessment of damages for the destruction of a saw mill, the property of the party of the second part, which stood on ground now occupied by said Canal.

And the said party of the first part hereby agrees, that the said State of Ohio shall erect and complete within eighteen months from the date hereof at the expense of the said State, in a secure, substantial and workmanlike manner, and keep in good repair, the regulating Gate, and weir above mentioned, to be constructed by the State, and to construct the same of stone walls of solid masonry and suitable timber and iron with the necessary embankments, agreeably to a place to be furnished by the Acting Commissioner or Engineer employed on said Canal or any adjoining portion thereof; and under the direction and subject to the inspection of such Acting Commissioner or Engineer; [fol. 121] the gates through which the water is to be drawn from the Canal to be so placed and formed that, together with weir below, they may at all times be readily made to secure a uniform and regular flow of water from the upper to the lower levels of the Canal according to the pleasure and discretion of the Acting Commissioner or Engineer, whether the hydraulic works are in operation or not.

And the said party of the second part further agrees to erect, complete and keep in good repair the regulating weir on the South side of the Canal, to be constructed of stone walls and plates of wood, with a substantial iron bar securely bolted on the top thereof, agreeably to a place to be furnished by the Acting Commissioner or Engineer employed on said Canal, or on any adjoining part thereof, and under the direction and subject to the inspection of such Acting Commissioner or Engineer; or to erect instead of the said weir, such feeder gate or gates, according to a plan to be furnished, as above, the work and material of which are to be approved of as above; and said gates when so constructed shall be under the control and management of such Acting Commissioner or Engineer. The weir or lower sill of the feeder gates over which the water is to pass from the Canal is to be so placed and formed that the top of the weir or lower sill of the feeder gates shall not be more than six inches below the level at which it shall be designed to

sustain the surface of the water in that part of the canal from whence the water is to be drawn. The said feeder gate or gates are to be so situate, so constructed that any duly authorized Agent of the State of Ohio may conveniently stop all the water from flowing through them, and that the quantity of water at any time to flow through them may conveniently be regulated in accordance with the intention of the parties to these presents and the description and direction of the Acting Commissioner or Engineer; the full right to direct, manage and control which, is hereby expressly reserved to the State of Ohio.

And it is further expressly agreed that the party of the second part shall not, for any purpose, or in any manner [fol. 122] whatever, obstruct the equal and regular flow of water from one line of the Canal to another, nor increase the flow, nor cause the water or any part thereof, to flow out of the Canal, except as hereinabove provided; nor shall the party of the second part permit any of said acts or things to be done by any persons employed in or about the mill or hydraulic works propelled by water hereby leased; and the said party of the second part shall be considered and held responsible for keeping the head races and regulating gates and weirs to be by him erected as above described, constantly in good repair and free from all obstructions; and a failure to do so or any interference with the flow of the water on their part, or on the part of any other person employed in or about said mills or hydraulic works aforesaid, shall be adjudged, and is hereby agreed to be determined a suspension of this lease, and of the rights and privileges of said party of the second part, growing out of this agreement, until the said party of the second part shall have paid to the proper Agent of the State of Ohio, all and singular the damages and costs of repairs which may have resulted from such failure or interference and furthermore have fully complied with these covenants.

And when at any time by the carelessness, neglect, or interference with the flow of water by the party of the second part or others in his employ, there shall occur any breach in the bank, the formation of a bar or other injury to the Canal, and also in case of the occurrence of any such injury or injuries in consequence of an unfaithful or unsubstantial

construction of any of the weirs, gates, embankments or other works to be constructed by the party of the second part, or in consequence of such said works being out of repair, then said party of the second part shall, on being notified thereof by said Acting Commissioner, Engineer or other proper Agent of the State, immediately repair said breach or other injury, or if such Agent of the State shall cause the same to be done (which he is hereby authorized at his option to do) then, said party of the second part shall pay to the said agent, all the necessary expenses incurred in repairing such breach or other injury on demand.

[fol. 123] And it is further understood and agreed that the water power hereby leased, or conveyed shall not be used to drive or propel any mill or other machinery of works, from which saw dust chips or other rubbish will be likely to be carried, thrown or floated into the Canal, so as to form obstructions to the navigation thereof, or to clog the gates, waste or regulating weirs, or otherwise injure or obstruct the same. And the said party of the second part shall at all times be bound to keep the Canal clear of all rubbish, or other obstructions consequent in any manner, on the use of the water hereby leased, and of the works and machinery erected therefor.

And if the party of the second part shall in any respect fail to fulfill and perform all the engagements of the said party hereinbefore expressed, or shall do, or permit to be done any act or thing hereby prohibited, or shall in any respect violate this agreement, then and in either case, all the rights and privileges derivable to said party of the second part from this agreement, shall from time of such violation, cease and determine until by some competent judicial judgment or decree such rights and privileges shall be duly restored; and any authorized Agent of the State shall have full power to enter upon and take possession of the premises and resume all the rights and privileges hereby granted to the party of the second part and hold the same until otherwise determined by a court of competent jurisdiction; and the said party of the second part shall moreover be liable for all damages consequent upon such violation of this agreement.

And it is further understood and agreed by the parties to this agreement that the head of water to be used by the

party of the second part as aforesaid to propel the six pairs of mill stones on the North side of said Canal is not to be less than four and a half feet, measuring from the surface of water above said Lock to the surface of water in Canal below the lock. And that the power for said two pairs of mill stones to be used on the South side of said Canal is to be so used to propel saw mills and is only to be used when there is a surplus of water in the Maumee River after supplying the Canal with water sufficient for the purposes of navigation and for all mills and other hydraulic [fol. 124] works that have been or may be hereafter leased from said State of Ohio. And it is further agreed that the regulating weir to regulate the flow of water from the Canal to the saw mill on the South side of the Canal as aforesaid, shall be constructed at the expense of the party of the first part, instead of the party of the second part as aforesaid, but ever thereafter to be kept in good repair by and at the expense of the second party.

In testimony whereof, the parties executed this agreement the day and year first above written.

R. Dickinson, Act. Com. of Board of Public Works.
(Seal.) Peter (his x mark) Minor.

Two witnesses.

Sept. 13, 1842.—Acknowledged by Peter Minor, before H. Corecreit, Justice of the Peace, Lucas County, Ohio.

[fol. 125] **Bond**

Peter Minor

to

The State of Ohio

Recorded in Record of Deeds and Leases M. & E. Canal, Office Ohio State Board of P. W.

Know all men by these presents, that I, Peter Minor of Lucas County, Ohio, am hereby held and firmly bound to the State of Ohio in the penal sum of Five Hundred Dollars, to which payment I bind myself, my heirs and assigns forever. Signed with my hand, and sealed with my seal this 15th day of July, 1846.

The conditions of the above obligation are that I hereby agree to convey to the State of Ohio within two months from this date a certain lot of ground, not exceeding one half acre agreeably to the terms of an agreement entered into between me and the State of Ohio, by the Board of Public Works, the payment for which I hereby acknowledge to have received in full. Said lot of ground to be laid off on the North Side of the Wabash and Erie Canal, near the head of the Maumee Rapids in Lucas County aforesaid, and to be bounded as follows: Beginning at a point in the North line of the towing path, one chain and sixty-nine above the head of the guard lock and running thence at right angles with the Canal north three and ½° east one chain and eighty-nine links; thence up the Canal parallel with the towing path for quantity.

(Signed) Peter (his x mark) Minor. (Seal.)

Two witnesses.

[fol. 126] Stip. Ex. 9

Monday, February 23, 1846.

Present: Messrs. Follett, Blickensderfer and Forrer.

Claim of Peter Minor

The Board proceeded under the Joint Resolution of the General Assembly, passed February 10, 1846, to examine the claim of Peter Minor, which resolution is in the words following:

"Resolved by the General Assembly of the State of Ohio, that the Board of Public Works are hereby authorized to examine the claim of Peter Minor, for the non-performance of a certain contract entered into by R. Dickinson, Acting Commissioner of the Board of Public Works with the said Minor, on the first day of September, one thousand eight hundred and forty-two, and all other matters in dispute between the State and the said Minor, and that they report to the Commissioners of the Canal Fund any further sum, which they may find due him, provided that the said Minor shall, before the investigation of his claim, execute and

deliver to the said Board a full and final release to the State of all further claims of any description, except so much as may be awarded to him by said Board under his resolution.

"Elias F. Drake," Speaker of the House of Representatives. "Seabury Ford," Speaker of the Senate."

February 10, 1846.

In pursuance of the requirements of the above Resolution the said Minor, on this day, filed with the Board, a full and final release to the State, duly executed; a copy of which release is here inserted, and is as follows:

"Know all men by these presents, that whereas, Peter Minor, did, on the first day of September, A. D. 1842, enter into an agreement with the State of Ohio, by R. Dickinson, Acting Commissioner, and Member of the Board of Public Works, by which, amongst other things, it was stipulated on the part of the said State of Ohio, that the said Peter [fol. 127] Minor, should relinquish to said State all right to claim damages for lapses consequent upon the construction of the Wabash and Erie Canal through his land and premises in Lucas County in said State, excepting a claim for the loss of a saw mill which occupied the site of the said canal; for which relinquishment, the said State would supply a water power to said Minor, upon his premises, sufficient to propel eight pairs of four feet and a half mill stones; and

Whereas, also, the General Assembly of the State of Ohio did on the 10th day of February, A. D. 1846, pass a resolution "authorizing the Board of Public Works to examine the claim of Peter Minor," a copy of which is hereto attached: (See copy of Resolution above)

Now, therefore, I, the said Peter Minor, in pursuance of said resolution, and in consideration of the sum of one dollar to me in hand paid, the receipt whereof, is hereby acknowledged, do hereby release, remise and forever quit claim unto the State of Ohio, all right, title and interest, estate and claim in and to the ground occupied by said canal and its appurtenances, and the easement necessary for the navigation thereof; and to all claims of damages for loss of water, and other losses of every kind, resulting from the

construction of said canal and appurtances, along, through, and over the premises and land owned by me, the said Peter Minor, and also on account of the inability of said State to supply the full amount of water power provided for in the contract aforesaid, To have and to hold the aforesaid rights and privileges unto the State of Ohio forever.

I moreover agree to receive as compensation in part for losses resulting from a deficiency in the quantity of water leased, any and all of the water which may pass around the guard lock from the level of the pool of the dam to the canal below the lock, together with the saw mill power provided for in the contract, and to receive a lease for the same on the term and conditions provided for in the contract aforesaid.

[fol. 128] In testimony whereof, I, the said Peter Minor, have hereto set my hand and seal this 23rd day of February A. D. 1846.

Peter (his x mark) Minor. (Seal.)

Signed, sealed and delivered in presence of A. B. Newburgh. B. B. Brown.

The State of Ohio,
Franklin County, ss:

Personally came before me, a Justice of the Peace, in and for said County, Peter Minor, grantor and releasor in the foregoing conveyance, and acknowledged the same to be his voluntary act and deed. Witnesseth my hand this 23rd day of Feb. A. D. 1846.

A. Patten, J. P."

Now for the purpose of more fully understanding the claim of said Peter Minor, which rests on the contract or agreement referred to in the resolution above cited, said contract is here inserted in full, and is in the words following, namely:

(Copy of said contract is Stipulation Exhibit No. 8 in this case.)

From the above contract, it will appear that the claim presented for the consideration of the Board, by the said Minor, under the resolution, consists in this: That the

agents of the State having failed from want of fall in the canal and other causes to furnish to the said Minor the water necessary to propel the six run of mill stones mentioned in said contract; and from due examination, it appearing that the total of water, which may be furnished to said Minor, "at and immediately above the Guard Lock, being Lock No. 9 on said canal, and near the town of Providence": does not exceed one and a half mill stone power.

The Board were constrained by the terms of the Resolution, in examining the claim of said Minor for this water, to place a cash value on the same, with a view of determining the amount said claim when offset against "other matters in dispute" between the State and said Minor, referred to in said Resolution.

[fol. 129] It will appear on reference to the terms of said contract, or agreement of Sept. 1, that in the releases of said Minor, in consideration of the grants on the part of the State, he expects and reserves "the right to claim and receive an assessment of damages for the destruction of a saw mill." This reservation from the knowledge possessed by the Board, of the ground occupied by the canal and the damage inflicted by its location on the property of said Minor, is understood to apply only to the mill, and not to the dam, or mill-race, or any other property connected with the use of the water at Providence. But, by reference to an award on this reserved claim, made by the appraiser of Damages on the Wabash and Erie Canal, it would appear that notwithstanding the full release contained in the contract of September 1st, the appraisers took into consideration the general damage sustained by said Minor by the location of the canal.

This will more fully appear by reference to the "award," a copy of which is here given, and is as follows:

"Peter Minor claims damage for injury done to his property in Providence, Township, Lucas County, Ohio. The applicant states in his application that he had erected and constructed at a great expense, a valuable saw mill, mill dam and mill-race, previous to the construction of the Wabash and Erie Canal, and that by the construction and location of said Wabash and Erie

Canal, his mill dam, mill and race were all destroyed. Upon the examination of the above described premises, and from facts elicited of the Resident Engineer, we find that the canal is located and constructed directly upon the site that the saw mill of the applicant stood on, and that the mill was torn down and destroyed by order of the Resident Engineer, then in charge of that division of the Wabash and Erie Canal. And the applicant further claims for some 150 saw logs that he had on hand at the time of the destruction of his property, above stated; also for timber used and destroyed; also for stone taken from his premises to build and construct culverts on said Wabash and [fol. 130] Erie Canal; also, for the mill irons either lost or become valueless by the destruction of his, the applicant's mill; for a bridge built across his mill race, and for the land occupied by said Wabash and Erie Canal.

Upon mature deliberation and considering that the applicant has laid out of the use of his mill since the year 1839, without receiving from the State any compensation whatever, after comparing the damage incurred with the benefits received, we assess the damages that the said Peter Minor has sustained, or may sustain, as aforesaid, at Two Thousand Five Hundred Dollars, as full compensation and payment of all right, interest, and claim thereto.

"Joseph McCutcheon." "T. J. Price."

$2,500.

February 23rd, 1846.

Peter Minor's Claim

This allowance of $2,500 Dollars is erroneously made, as we conceive, through ignorance on the part of the appraisers, of the existence of the full release contained in the contract of September 1st, of all damage beyond the value of his saw mill, by the said Minor, or from some other cause, not understood. It is clearly a large allowance beyond the value of his mill, which except therefor, we feel warranted in taking into consideration in estimating the damage sustained by the said Minor by the failure of the State to furnish the power for the six mill stones "at and immediately above the Guard Lock near the town of Providence" mentioned in said contract of Sept. 1, 1842.

With the facts in this case fully before them, drawn from the documents and papers here exhibited, the Board adjudge and determine as follows:

First. That the power created by the water discharged around the Guard Lock near the town of Providence, estimated at one and a half mill stone power, be the same more or less, shall be possessed and enjoyed by the said Peter Minor, for his own proper use, and under the limitations and restrictions imposed for the use of the water for the six millstone power by the contract of the 1st of September, 1842.

[fol. 131] Second. That in addition to the large excess awarded by the appraisers for his saw mill, the said Minor shall be allowed the further sum of Two Thousand Eight Hundred Dollars, which with the water for the two pairs of mill stones, stipulated to be taken from the south side of the canal in the contract of the 1st of Sept. 1842, (to be taken from the canal under all the limitations and restrictions imposed by said contract) shall be in full liquidation of all claims for damage, of all and every kind, sustained by said Minor in the location and construction of the Wabash and Erie Canal, and its appurtenances, either reserved in said contract of the 1st of Sept. 1842, or growing out of any failure on the part of the State to fulfill the conditions and stipulations in said contract contained, or for the appropriation of the water of the Maumee River, claimed by said Minor, for canal navigation or hydraulic purposes. And this allowance shall also be taken in satisfaction of a piece of land, not exceeding one acre, situated on the north side of the canal, claimed by the Acting Commissioner as necessary for the erection of a lock-house, for which piece of land, the said Minor has agreed to execute a conveyance to the State in fee simple.

The following report was made by the Board to the Commissioners of the Canal Fund:

Office of the Board of Public Works, Columbus

Feb. 23, 1846.

To E. N. Sill, Esq., Acting Fund Commissioner:

Sir: In the matter of Peter Minor, referred to the Board of Public Works, under a resolution of the General Assembly of the 10th inst., the Board have this day determined that there is due the said Minor, on an adjustment of his rights under his contract, with the State, the sum of twenty eight hundred dollars, independent of certain water power to be secured to said Minor.

By order of the Board.

A. B. Newburgh, Sec'y.

[fol. 132] Columbus, Ohio, Aug. 14th, 1912.

I, Chas. W. Diehl, Secretary of the Board of Public Works of the State of Ohio, hereby certify the foregoing to be a true copy of the Records of said Board as recorded in Vol. 4, A, Pages 73, 74, 78, 79, 80 and 81, so far as the same related to the matter of the grant to Peter Minor on the Wabash and Erie Canal.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Public Works, the day and date above written.

Charles W. Diehl, Sec'y Board of Public Works.

[fol. 133] Stip. Ex. 10

This agreement, Made this 30th day of December, 1912, between the State of Ohio, party of the first part, by the Board of Public Works thereto duly authorized by law, and The Toledo Grain & Milling Company, party of the second part, witnesseth: That said party of the first part, in consideration of the rents reserved, and the covenants of the party of the second part hereinafter contained, and upon the express condition that the party of the second part shall continue during the whole of its term to comply with all

and singular the limitations and conditions hereinafter contained, and shall in every respect perform all the stipulations of this agreement by said party to be performed, agrees to sell and lease to said party of the second part for the term of thirty (30) years, from and after the 31st day of December, 1912, subject to the restrictions limitations and conditions herein contained, the use and occupation of all the surplus water passing Locks Numbers Forty-six (46) and Forty seven (47) of the Miami & Erie Canal in the City of Toledo, Ohio, not necessary for the purposes of navigation and not heretofore leased, the same being not less than a continuous flow of four thousand eight hundred (4,800) cubic feet per minute; it being the intention to regrant and re-lease all of the water, land, water rights and privileges heretofore granted by the State of Ohio to said The Toledo Grain and Milling Company under the terms of a certain lease of water power duly executed on behalf of the State of Ohio by C. A. Flickinger, Acting Commissioner, M. & E. Canal, and on behalf of The Toledo Grain and Milling Company by F. N. Quale, President, W. J. Woods, Secretary, the 13th day of August, 1889, and recorded November 4, 1889, in Volume G of Leases, page 21, Lucas County Records, the water hereby leased to be taken out of the level of the Miami & Erie Canal next above Lock No. Forty-eight in the City of Toledo, and to be conveyed to the mills or other hydraulic works from between two regulating weirs, to be constructed by, and at the expense of the party of the second part as hereinafter specified.

And the said party of the second part, for and in consideration of the right to the use and occupation of said water, agrees to pay to said State the yearly rent or sum of [fol. 134] Fifteen Hundred ($1500.00) Dollars, the rent to be paid semi-annually in advance on the first day of May and November in each and every year, during the continuance of this lease, to the Canal Collector at Columbus, Ohio, or other Agent of the State authorized to receive the same.

And the said party of the second part further agrees to erect, at his own expense, in good, secure, substantial and workmanlike manner, the regulating weirs above mentioned, to be constructed of stone walls and plates of wood, with

a substantial iron bar securely bolted on the top thereof, agreeably to a plan to be furnished by the Superintendent of Public Works or Engineer employed on any adjoining part of the Canal, and under the direction and subject to the inspection of such acting superintendent of Public Works or Engineer, the weir over which the water is drawn over the Canal to be so placed and formed that the top of the weir shall not be more than six inches below the level at which it shall be designed to sustain the surface of the water in that part of the Canal from whence the water is to drawn; and the other, or second weir is to be so placed and formed that the top thereof will be at least one inch lower than the top of the weir over which the water is drawn from the Canal, and of such length and otherwise so constructed that a uniform quantity of water will flow from the upper to the lower levels of the Canal, whether the hydraulic works are in operation or not.

And it is further expressly agreed that the party of the second part shall not for any purpose or in any manner whatever obstruct the equal and regular flow of water from one level of the Canal to another, nor increase the flow, nor cause the water, or any part thereof to flow out of the Canal; nor shall the party of the second part permit any of said acts or things to be done by any person or persons employed in or about the mills or hydraulic works propelled by water hereby leased. And said party of the second part shall be considered and held responsible for keeping the regulating weirs above described constantly in good repair and free from all obstructions; and a failure to do so, or an interference with the flow of water on their part, [fol. 135] or on the part of any person employed in or about said mills or hydraulic works aforesaid, shall be adjudged a forfeiture of this lease, and of all the rights and privileges of the said party growing out of this agreement.

And said party of the second part further agrees to so construct the head race, tail race, and other works and devices connected with the use of the water hereby leased, that said water will at all times return into the Canal, after being used for hydraulic purposes at some convenient and proper place to be designated therefor by the Superintendent of Public Works, or other authorized agent of the State, on the level next above Lock No. 51, in such manner

as not to carry deposit into the Canal, nor obstruct the navigation thereof; and also that a regular and uniform quantity of water may at all times flow from the upper to the lower levels of the Canal.

And the said party of the second part further agrees, during the continuance of this lease, to keep constantly in good order and repair the weirs, head and tail race, and all other works and devices connected with the use of the water hereby leased, so far as the same shall be necessary to secure the regular and uniform flow of water from the upper to the lower levels, and also to prevent any breach in the bank, the formation of a bar or other injury to the Canal, or impediment to the navigation thereof, and if, nevertheless, any such breach, bar or other injury or impediment should occur in consequence of any of said works not being faithfully and substantially constructed, or being suffered to be out of repair, then said party of the second part shall, on being notified thereof by the Superintendent of Public Works, or other proper agent of the State, immediately repair said breach or other injury; or if such agent of the State shall cause the same to be done, (which he is hereby authoriezd at his option to do,) then said party of the second part shall pay to said agent all necessary expenses incurred in repairing such breach or other injury, on demand.

It is expressly understood and agreed, by and between the parties, that for the purpose of preventing or repairing [fol. 136] breaches, removing bars or other obstructions to the navigation of the Canal, or for the purpose of making any improvements in the Canal, or the works or devices connected therewith, any authorized agent of the party of the first part, may cause the water to be drawn, either partially or wholly out of the Canal, and to remain so drawn out so long as may be necessary for any of the aforesaid purposes; and the said party of the second part shall not be entitled to any deduction from the rent hereby made payable, unless said party shall thereby be deprived of the use of the water for more than one month in any one year; and the party of the first part reserves the right to resume at any time the use of the water hereby leased, whenever the same shall become necessary for the purposes of navigation, and to continue the use thereof so long as the same

shall be necessary for the purpose aforesaid; and if it shall become necessary for the party of the first part to resume the use of so great a portion of the water hereby leased, or of the whole thereof for so great a portion of the time as to defeat the object of this lease, by destroying the value of the privilege; then the party of the second part shall be from such time absolved from all further liabilities growing out of this agreement.

And it is further understood and agreed, that at the expiration of this agreement the party of the second part shall be entitled to a renewal of the lease, for a like term of years, for such annual rent as may be agreed upon between the parties hereto. And in case of disagreement between the aforesaid parties, the value of such rental shall be determined by three judicious disinterested freeholders, one to be chosen by the Superintendent of Public Works, or authorized agent of the State, one by the party of the second part and the third by the two thus chosen.

And it is further understood and agreed, that the water power hereby leased, shall not be used to drive or propel any saw mill, or other machinery or other works, from which saw dust, chips or other rubbish will be likely to be carried, thrown or floated into the Canal, so as to form bars or other obstructions to the navigation in the Canal, or to clog the gates, waste weirs or regulating weirs, or otherwise injure or obstruct the same. And the party of the second part shall at all times be bound to keep the Canal clear of [fol. 137] all rubbish, or other obstructions consequent, in any manner, on the use of the water hereby leased, or of the works or machinery erected therefor.

And said party of the first part, in consideration of rents and agreements hereinbefore specified, further agrees to lease to the party of the second part, upon the same conditions, and subject to the same limitations and restrictions herein contained, all that certain piece or parcel of land, situate in the City of Toledo, Ohio, butted, bounded and described as follows:

Being part of River Tracts Numbers Three (3) and Four (4) of the Reservation of Twelve Miles, beginning at a point forty-seven (47) feet at right angles from the south-east face of the lock wall of Lock Number Five (5) on the

Wabash and Erie Canal and one (1) chain above the head of said Lock, and running thence north forty-two (42) degrees and thirty (30) minutes east parallel with said face of said lock wall to the Toledo Side Cut below Lock Number Three (3) ten (10) chains and eighty-six (86) links, thence south eighty-nine (89) degrees east on said Canal bank two (2) chains and seventy (70) links, thence south forty-two (42) degrees and thirty (30) minutes west twelve (12) chains and sixty-seven (67) links, thence north forty-seven (47) degrees and ten (10) minutes west two (2) chains to the place of beginning, containing two (2) acres and thirty-five hundredths (.35) of an acre, to enable the party of the second part to use and enjoy the use of the water power hereby leased; for the like term of Thirty (30) years from the 31st day of December, 1912.

It is further understood and agreed, that said party of the second part shall not sell, assign or transfer his right or interest derived from this agreement, or any part thereof, to any person or persons, unless the assent of some authorized agent of the State shall first be obtained therefor in writing.

And if at any time, any installment which shall become due for rent as hereinbefore expressed, and without demand made therefor, shall remain unpaid for one month from the time the same shall fall due, or if the party of the second part shall in any respect fail to fulfill and perform all the en-[fol. 138] gagements of said party hereinbefore expressed, or shall do, or permit to be done, any act or thing hereby prohibited, or shall in any respect violate this agreement, then, and in either case, all the rights and privileges derivable to said party from this agreement shall from the time of such failure or violation cease and determine, and any authorized agent of the State or lessee under said State shall have full right and power to enter upon and take possession of the premises, and resume all the rights and privileges hereby granted to the party of the second part; and said party of the second part shall moreover be liable for all damages consequent upon such violation of this agreement.

And the party of the second part hereby waives all right of demand by the party of the first part.

In testimony whereof, the parties executed this agreement the day and year first above written.

(Signed) W. Kirtley, Jr., Member Bd. of Public Works. (Signed) B. W. Baldwin, Member Bd. of Public Works. (Signed) J. A States, Member Bd. of Public Works. The Toledo Grain & Milling Co. (Signed) D. W. Camp, Pres.

Signed, sealed, and delivered in presence of: Witnesses: (Signed) J. D. Hurlbert. (Signed) Arthur E. Frost.

[fol. 139] STIP. EX. 11

A Resolution Accepting Appraisement and Declaring Intention of the City of Toledo to Purchase All That Portion of the Abandoned Bed of the Miami and Erie Canal Included in the Provisions of House Bill No. 560 of the General Assembly of Ohio, as Published in Volume 108, Page 1138, Part 2, of the Laws of Ohio, 1919

Whereas, That portion of the Miami and Erie Canal of Lucas County, Ohio, described in House Bill No. 560 of the General Assembly of Ohio, as published in Volume 108, page 1138, Part 2, Laws of Ohio, 1919, and set forth in the following resolution, has been abandoned and has been duly appraised in accordance with the provisions of said act, to be of the value of $300,000.00 and,

Whereas, By said act provision was made for the purchase by the City of Toledo of said abandoned portion of said Miami and Erie Canal at and for the appraised value thereof: Now, therefore,

Be it resolved by the Council of the City of Toledo (two-thirds of all members elected thereto concurring therein):

Section 1. That the appraisement of the abandoned portion of the Miami and Erie Canal, as provided for in said House Bill No. 560, and as herein before set forth, for the sum of $300,000.00 be and the same is hereby approved and accepted by the City of Toledo.

Section 2. That the City of Toledo, Ohio, hereby declares its intention to purchase and acquire by proper deed from

the State of Ohio, in accordance with the terms of said act, all the abandoned portion of the Miami and Erie Canal lying within Lucas County, Ohio, as set forth in said House Bill No. 560, and more particularly described as follows:

Commencing at the foot of the outlet lock of the Miami and Erie Canal in the City of Toledo, Lucas County, Ohio, being Lock No. 52, of said canal numbering north from Loramie Summit, and extending thence westerly 1,200 feet including the full width of the bed and banks thereof as defined by S. A. Buchanan's survey of said canal made under the direction of the state board of public works in the summer of 1909; also that portion of said Miami and Erie Canal commencing at the inner face of the southerly abutment of the old aqueduct over Swan Creek on the Manhattan branch of said Miami and Erie Canal, including the full width of the bed and banks thereof as defined by Buchanan's survey, for a distance of 45,683 feet to a point just below the head of the Maumee side-cut, near Maumee, Ohio, excepting therefrom any portion of any state lot now under an existing lease, and likewise excepting therefrom any portion of the same that may possibly be required in the construction of any ship or barge canal, under authority of legislation passed or to be passed by the Congress of the United States, or by the State of Ohio.

Section 3. That the City Clerk is hereby directed to file with the Governor of Ohio, a certified copy of this resolution as notice of acceptance of said appraisement, and of intention of the City of Toledo, to purchase said abandoned portion of said canal in accordance with the provisions of said House Bill No. 560.

Section 4. That this resolution shall take effect and be in force from and after the earliest period allowed by law.

[fol. 140] Adopted September 11, 1922.

C. D. Hoover, President pro Tem. of Council.

Attest: A. W. Payne, Clerk of Council.

I, A. W. Payne, Clerk of Council of the City of Toledo, State of Ohio, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Council September 11, 1922; approved by the Mayor Sepfember

16, 1922; published in the Toledo City Journal September 16, 1922, and as found recorded in Volume "V" of Resolutions, on Page 9, on file in this office.

Attest:

(Sgd.) A. W. Payne, Clerk of Council. (Seal City of Toledo, Clerk of Council, State of Ohio.)

Toledo, Ohio, May 16, 1925.

[fol. 141] STIP. EX. 12

An Ordinance No. 3043, Authorizing the Director of Public Service to Take the Necessary Steps for Eliminating the Water in the Miami and Erie Canal and to Make Contracts of Settlement with the Defiance Gas and Power Company and the Toledo Grain and Milling Company

Whereas, the elimination of water in the Miami and Erie Canal is necessary to the immediate preservation of public property and safety and the same constitutes an emergency, therefore,

Be it ordained by the Council of the City of Toledo:

Section 1. That the Director of Public Service be and he is hereby authorized and directed to take all proper and necessary steps for the elimination of water in the Miami and Erie Canal from Lock 52 in the City of Toledo and from the southerly aqueduct at Swan Creek to the cut-off in the Village of Maumee, Ohio, near the plant of the Defiance Gas and Power Company, and to cause all of said water in said canal to be eliminated.

Section 2. That the Director of Public Service is further authorized to enter into contract, subject to the approval of the Council of the City of Toledo, with the Defiance Gas and Power Company and The Toledo Grain and Milling Company for the purpose of settling all claims of every kind and description that said companies may have against the City of Toledo or State of Ohio, on account of the abandonment by said State of Ohio of the bed of the Miami and Erie Canal and of the elimination of water in said canal and all other things incident thereto.

Section 3. That this ordinance, being an emergency measure, shall take effect and be in force from and after its passage.

Passed Sept. 10, 1923.

(Sgd.) E. D. Cullen, President of Council.

Attest: (Sgd.) A. W. Payne, Clerk of Council.

I, A. W. Payne, Clerk of the Council of the City of Toledo, State of Ohio, do hereby certify that the foregoing is a true and correct copy of an ordinance passed by the Council September 10, 1923; approved by the Mayor September 14, 1923, and published in The Toledo City Journal September 15, 1923, and as found recorded in Volume 20 of General Ordinances, on Page 27, on file in this office.

Attest:

(Sgd.) A. W. Payne, Clerk of Council. (Seal Clerk of Council, City of Toledo, State of Ohio.)

Toledo, Ohio, May 16, 1925.

[fol. 142] STIP. EX. 13

Resolution

Whereas, the City of Toledo in December, 1922, acquired from the State of Ohio by deed that part of the Miami and Erie Canal lying within the corporate limits of the city and extending southwesterly through the Village of Maumee to and near the Maumee side-cut, under the provisions of H. B. 560, duly enacted by the general assembly of the State of Ohio; and,

Whereas, the city in acquiring said portion of the Miami and Erie Canal intended and does intend to improve it as a boulevard over the entire length thereof; and,

Whereas, by the terms of said act the city is to construct all bulkheads and embankments necessary to cut off the flow of water at or near the southerly end of the canal abandoned by the state and acquired by the City of Toledo, as herein stated, and construct all overflow waste-weirs and necessary channels required to care for the surplus water

that must be wasted at some point near the Maumee side-cut; and,

Whereas, the City of Toledo is now ready to proceed with the construction of the necessary bulkheads, embankments, waste-weirs and channels to cut off the flow of water at the southerly end of the portion of the canal it has acquired and through the Maumee side-cut into the Maumee River; and,

Whereas, an emergency exists, now, therefore,

Be it resolved by the Council of the City of Toledo:

Sec. 1. That it is necessary to cut off the flow of the water of the Miami & Erie Canal at the southerly end of the portion of the canal acquired by the City of Toledo, and through the Maumee side-cut, and to construct the necessary bulkheads, embankments, waste-weirs and channels necessary to cut off and divert the flow of water into the Maumee River through said Maumee side-cut, and to do the work necessary in connection therewith.

Sec. 2. That the director of Public Service be and is hereby authorized and directed to notify the Superintendent of Public Works at once of the intention of the City of Toledo to proceed with said work, and prepare and file with the Superintendent of Public Works plans therefor, and that he effect all necessary arrangements with the Superin- [fol. 143] tendent of Public Works for the construction thereof under the supervision and direction and with the approval of the Superintendent of Public Works.

Sec. 3. That this resolution, being an emergency measure, shall take effect and be in force from and after its passage.

Adopted March 9, 1925.

(Signed) F. J. Mery, President of Council.

Attest: (Sgd.) A. W. Payne, Clerk of Council.

[fol. 144] STIP. EX. 14

K. W. H. Generated at the Maumee Hydro Plant, by Months, for the Years 1914 to 1924, Inc.

1914

Jan.	658,400	
Feb.	466,200	
March	448,200	
Apr.	557,300	Ice in Feed Gates 13000 Volt Line out.
May	447,350	Search for Body
June	653,800	Volt Line out.
July	541,850	
Aug.	333,250	Sewer Drained Canal
Sept.	507,250	
Oct.	376,600	Building Bridge
Nov.	426,300	
Dec.	390,900	
	5,807,400	

1915

Jan.	448,850	
Feb.	443,900	
March	689,300	
Apr.	644,550	
May	690,700	
June	698,200	
July	796,600	
Aug.	889,900	
Sept.	856,550	
Oct.	873,000	
Nov.	860,300	
Dec.	775,000	
	8,666,850	

	1916	
Jan.	398,250	Water out of Canal.
Feb.	549,100	
March	645,450	
Apr.	677,800	
May	740,150	
June	735,250	
July	697,500	
Aug.	538,400	
Sept.	158,850	Low Water
Oct.	170,200	" "
Nov.	170,550	" "
Dec.	351,650	" "
	5,833,150	

[fol. 145]

	1917	
Jan.	432,400	
Feb.	553,950	
March	746,900	
Apr.	698,350	
May	798,000	
June	837,400	
July	662,750	
Aug.	593,400	
Sept.	288,350	
Oct.	435,500	
Nov.	831,400	
Dec.	700,500	
	7,578,900	

	1918	
Jan.	650,700	
Feb.	522,250	
March	884,600	
Apr.	907,600	
May	816,400	
June	722,400	
July	355,900	

Aug.	138,700	No Water.
Sept.	624,600	
Oct.	268,800	No Water
Nov.	746,000	
Dec.	726,500	
	7,364,450	

1919

Jan.	625,500	
Feb.	686,350	
March	761,950	
Apr.	725,350	
May	797,900	
June	616,750	
July	370,200	Water Low
Aug.	499,650	
Sept.	248,150	Water Low.
Oct.	735,500	
Nov.	704,950	
Dec.	604,250	
	7,376,500	

[fol. 146]

1920

Jan.	480,850	
Feb.	546,100	
March	722,600	
Apr.	692,500	
May	833,000	
June	837,600	
July	871,500	
Aug.	579,900	
Sept.	795,800	
Oct.	423,900	
Nov.	746,500	
Dec	587,300	
	8,117,550	

	1921	
Jan.	576,000	
Feb.	597,100	
March	620,400	
Apr.	575,700	
May	596,000	
June	129,000	Break in Canal.
July	576,500	
Aug.	529,600	
Sept.	471,600	
Oct.	602,100	
Nov.	739,900	
Dec.	728,200	
	6,742,100	
	1922	
Jan.	541,100	
Feb.	532,700	
March	656,900	
Apr.	393,900	
May	628,700	
June	647,800	
July	795,300	
Aug.	552,600	
Sept.	750,300	
Oct.	564,600	
Nov.	509,600	
Dec.	572,700	
	7,146,200	
[fol. 147]	1923	
Jan.	570,300	
Feb.	485,600	
March	466,400	Break in Canal.
Apr.	697,800	
May	682,900	
June	625,000	
July	692,100	

Aug.	769,000	
Sept.	734,200	
Oct. .	750,800	
Nov. .	778,300	
Dec. .	781,900	
	8,034,300	

1924

Jan.	94,100	Break in Canal.
Feb.	291,000	
March	62,400	Break in Canal.
Apr.	346,200	
May	552,300	
June	564,300	
July	658,400	
Aug.	613,100	
Sept.	623,100	
Oct. .	484,900	
Nov.	339,800	
Dec. .	437,500	
	5,067,100	

Recapitulation

1914	5,807,400
1915	8,666,850
1916 .	5,833,150
1917	7,578,900
1918	7,364,450
1919	7,376,500
1920	8,117,550
1921	6,742,100
1922	7,146,200
1923	8,034,300
1924	5,067,100
	77,734,500

[fol. 148] KWH Electric Generation of the Maumee Hydro Plant from Jan., 1925, to Mar., 1928

1925	
Jan.	580,400
Feb.	524,700
March	833,100
Apr.	60,300
May	762,200
June	585,900
July	709,100
Aug.	615,700
Sept.	397,200
Oct.	529,800
Nov.	744,100
Dec.	662,400
	7,004,900
1926	
Jan.	583,600
Feb.	513,900
March	455,800
Apr.	703,800
May	849,700
June	842,300
July	739,900
Aug.	834,800
Sept.	866,000
Oct.	934,500
Nov.	911,500
Dec.	611,700
	8,847,700
1927	
Jan.	655,800
Feb.	758,500
March	972,700
Apr.	915,600
May	982,900
June	917,200

July	894,000
Aug.	717,900
Sept.	624,000
Oct.	811,600
Nov.	585,100
Dec.	620,419
	9,455,819

1928

Jan.	481,144
Feb.	571,158
Mar.	885,935
	1,938,237

[fol. 149] STIP. EX. 15

Certified Copy

No. 264,792

Deed

Whereas, on the 22nd day of January, 1920, the General Assembly of Ohio, passed an Act abandoning a portion of the Miami and Erie Canal in Lucas County, Ohio, and providing for the sale or lease of the same to the City of Toledo, Ohio, upon the terms in said Act, and hereinafter set forth, which said Act appears in 108 Ohio Laws (part 2) at page 1138, et seq.; and

Whereas, the Special Board of United States Army Engineers which at the time of the passage of said Act was, under Congressional authority approved March 2, 1919, making surveys of the enlarged canal mentioned in said Act, set forth in their report dated May 7, 1921, that the route considered by them as to said enlarged canal mentioned in said Act did not embrace the section of the Miami and Erie Canal abandoned by said Act and hereinafter described, but followed the Maumee River from near Defiance, Ohio, to Lake Erie, at Toledo, Ohio, as does likewise the route considered by them for a branch canal to

connect Lake Erie and Lake Michigan, and further set forth in their said report the conclusion that the construction of the proposed enlarged canal mentioned in said Act of the General Assembly of Ohio is not economically warranted, and did not in their said report show any part of the tract abandoned by said Act and hereinafter described as being required for an enlarged canal; and

Whereas, subsequent to the making of said engineer's report two appraisers were appointed by the Governor of Ohio, as directed by said Act and proceeded in conjunction with the Superintendent of Public Works of the State of Ohio to make an appraisement of the canal property abandoned by said Act and hereinafter described, which appraisement was in the sum of Three Hundred Thousand Dollars ($300,000); and

Whereas, said appraisers on or about the 14th day of January, 1922, filed in writing with the Governor of the State of Ohio, and with the Mayor of the City of Toledo, certified copies of their said appraisement; and

[fol. 150] Whereas, the City of Toledo, by resolution of its City Council adopted September 21, 1922, approved the appraisement of said canal property and elected to purchase said property; and

Whereas, by Ordinance No. 2546 adopted by its City Council on July 24, 1922, said City of Toledo, provided an issue of bonds in the sum of three hundred fifteen thousand dollars for the purchase of said canal property for park and boulevard purposes; and

Whereas, by Ordinance No. 2659 adopted by its City Council on the 23rd day of October, 1922, said City of Toledo, appropriated the necessary funds for the purchase of said canal property and is now ready to make payment fro said property upon the execution and delivery to it by the State of Ohio, of a proper deed for said property; and

Whereas, on the 16th day of November, 1922, the State of Ohio, acting by Harry L. Davis, Governor, and John G. Price, Attorney General, and the City of Toledo, acting by Bernard Brough, its Mayor and William T. Jackson, its Director of Public Service, thereunto duly authorized by Ordinance 2669 adopted by the Council of said City of Toledo on the 30th day of October, 1922, entered into the

contract described in Section 8 of said Act, which contract is here referred to and made part hereof; and

Whereas, the City of Toledo has paid into the State Treasury of Ohio the sum of Three Hundred Thousand Dollars ($300,000.00) in payment of the purchase price of said canal property; and

Whereas, each and all of the conditions precedent to the making and delivery of a deed to said City of Toledo, by the State of Ohio, for said canal property, have been complied with and performed.

Now, therefore, The State of Ohio does hereby grant, bargain, sell and convey unto the City of Toledo, a municipal corporation of the State of Ohio, its successors and assigns, forever, for park and boulevard purposes as aforesaid, the following described real estate, to-wit:

Commencing at the foot of the outlet lock of the Miami and Erie Canal in the city of Toledo, Lucas County, Ohio, being lock No. 52, of said canal numbering north from Loramie Summit, and extending thence westerly 1,200 feet, [fol. 151] including the full width of the bed and banks thereof as defined by S. A. Buchanan's survey of said canal made under the direction of the state board of public works in the summer of 1909; also that portion of said Miami and Erie Canal commencing at the inner face of the southerly abutment of the old aqueduct over Swan Creek on the Manhattan branch of said Miami and Erie Canal, and extending thence southwesterly over and along said Miami and Erie Canal, including the full width of the bed and banks thereof as defined by Buchanan's survey, for a distance of 45,683 feet to a point just below the head of the Maumee side-cut, near Maumee, Ohio, excepting therefrom any portion of any state lot now under an existing lease, and likewise excepting therefrom any portion of the same that may possibly be required in the construction of any ship or barge canal, under authority of legislation passed or to be passed by the Congress of the United States, or by the State of Ohio.

Excepting therefrom and subject to the rights of owners of existing leases of either lands or water or both, and excepting therefrom and subject to the rights of said owners to a renewal of said existing leases.

To have and to hold said premises as fully and completely and subject to all such conditions and restrictions as the State of Ohio might or should convey the said premises by virtue of the provisions of the aforesaid Act of the General Assembly of Ohio.

In witness whereof, the State of Ohio has hereunto set its name by Harry L. Dapis, its Governor, who has hereunto subscribed his name and caused the great seal of the State of Ohio to be affixed hereto, in triplicate, this 29th day of December, A. D. 1922.

The State of Ohio, by Harry L. Davis, Governor.

By the Governor: Tarry C. Smith, Secretary of State. (The Great Seal of the State of Ohio.)

Approved December 28, 1922. John G. Price, Attorney Gen.

[fol. 152] United States of America,
State of Ohio,
Lucas County, ss:

I, Harry M. Curtis, Recorder of Lucas County, and State of Ohio, aforesaid, in whose custody the County Records are required by the laws of the State of Ohio to be kept, do hereby certify the above and foregoing to be a true, perfect and complete copy of the Record of a certain deed recorded in Volume 589 of Deeds of said County, at page 603, and that the said foregoing copy has been compared by me with the original Record, and the same is a full and complete transcript thereof.

In Witness Whereof, I have hereunto subscribed my name officially and affixed the seal of said County and State, at the Court House in Toledo, this 15th day of May, A. D. 1925.

(Sgd.) Harry M. Curtis, Recorder Lucas County, Ohio, by (Sgd.) Anton Weil, Deputy. (Seal.)

[fol. 153] Stip. Ex. 16

In the District Court of the United States for the Northern District of Ohio, Western Division

No. 515. In Equity

The Maumee Valley Electric Company, Plaintiff,

vs.

The City of Toledo, Ohio; Bernard F. Brough, Mayor of said City, and William T. Jackson, Director of Public Service of said City, Defendants

Journal Entry (Filed July 7, 1925)

This cause came on to be heard upon the merits at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the equities of the case are with the defendants and against the plaintiff, that the plaintiff is not entitled to the relief prayed for in its petition, that the temporary restraining order heretofore granted be and the same is hereby discontinued, and that the petition of the plaintiff be and the same is dismissed at its cost; to each and all of which findings the plaintiff by its counsel in open Court then and there excepted.

Plaintiff gives notice of appeal, and appeal bond is fixed at Five Thousand Dollars ($5,000.00), but not to operate as a supersedeas.

John M. Killits, Judge.

[fol. 154] STIP. EX. 17

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 4483

THE MAUMEE VALLEY ELECTRIC COMPANY, Appellant,

vs.

THE CITY OF TOLEDO et al., Appellees

Appeal from the District Court of the United States for the Northern District of Ohio

Decree (Filed May 14, 1926)

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

On consideration Whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be and the same is hereby reversed with costs and the record remanded with directions to enter a new decree not inconsistent with the opinion of this Court, including injunction against doing any act to obstruct or prevent the flow of water in the canal to plaintiff's hydro-electric plant at Maumee, except upon compliance with its obligation to make payment to plaintiff as construed in the opinion of this court.

[fol. 155] STIP. EX. 18

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

No. 515. In Equity

THE MAUMEE VALLEY ELECTRIC COMPANY, Plaintiff,

vs.

THE CITY OF TOLEDO, OHIO; BERNARD F. BROUGH, as Mayor of said City of Toledo, and William T. Jackson as Director of Service of said City, Defendants

Decree on Mandate

This cause having been removed from this Court to the United States Circuit Court of Appeals for the Sixth Cir-

cuit by appeal from the decree entered in this cause in this Court on the seventh day of July, 1925, in favor of said defendants and against said plaintiff; and said Circuit Court of Appeals having ordered, adjudged and decreed on May 14, 1926, that said decree of this Court in this cause be reversed and that the same was thereby reversed with costs, and that the record be remanded to this Court with directions to enter a new decree not inconsistent with the opinion of that Court filed May 14, 1926, including injunction against said defendants from doing any act to obstruct or prevent the flow of water in the Miami and Erie Canal to plaintiff's hydro-electric plant at Maumee, Ohio, except upon compliance with the obligation of defendant, the City of Toledo, to make payment to plaintiff as construed and determined in said opinion of that Court, and said United States Circuit Court of Appeals having remanded said cause to this Court as appears by mandate of said Circuit Court of Appeals, now here; and

Whereas the Clerk of this Court on August 4, 1926, entered on said mandate a decree which the Court now finds should be amended so as to comply with said decree of said United States Circuit Court of Appeals of May 14, 1926, and said mandate:

Now, therefore, amending said decree of this court of August 4, 1926, entered on said mandate as aforesaid, and on motion of counsel and solicitors for the plaintiff, it is [fol. 156] ordered, adjudged and decreed that said final decree of this court entered as aforesaid on the 7th day of July, 1925 be and the same hereby is reversed, vacated, set aside and held for naught; that the equities of and findings in this cause on the issues joined herein are with the plaintiff and against the defendants; that on the issues joined in this cause the court finds for the plaintiff and against the defendants; and that said defendants and each of them and their officers, agents, appointees and employees and their respective successors be and they and each of them hereby are enjoined from doing any act or thing to prevent, obstruct or in any way interfere with and from in any way preventing, obstructing or interfering with the flow of water to, in, or through the Miami and Erie Canal to and through plaintiff's hydro-electric plant at Maumee, Ohio, except upon and until full compliance by defendant, The City of

Toledo, Ohio, with its obligation to make payment and compensation to plaintiff as construed, determined and required in and by said opinion of said United States Circuit Court of Appeals and the findings of this decree; and it is further ordered, adjudged and decreed that said plaintiff have and recover from said defendant, The City of Toledo, Ohio, its costs herein expended, taxed at $—, and have execution therefor.

[fol. 157] STIP. EX. 19

Application to Lease

Division of Public Works

August 7, 1924.

Director of Highways and Public Works and Superintendent of Public Works, Columbus, Ohio.

SIR: Application is hereby made to lease from the State of Ohio, for hydraulic purposes, the following described state property, to-wit:

Description:

The use and occupation of all the water and lands in and along the Miami and Erie Canal between the intake of said canal at Providence, Ohio, and the power plant of the undersigned, the applicant herein, at Maumee, Ohio, covered and called for by leases heretofore granted by the State of Ohio for and of waters and lands in and along said canal between said points, which leases are as follows:

1. Lease to Robert J. Law, trustee, dated March 12, 1895.

2. Supplemental lease and agreement to the Maumee Valley Electric Company, dated December 14, 1910, which is supplementary to the said Robert J. Law lease.

3. Lease to George K. Detwiler, dated February 20, 1901.

4. Lease to A. C. Tryon, dated April 8, 1903.

5. Lease to The Maumee Paper Company, dated April 8, 1903.

6. Lease to Thomas W. Studer, dated November 13, 1906.

Each of the above leases is now owned by the undersigned, applicant herein, The Maumee Valley Electric Company, and the lands covered thereby are now occupied by this applicant, and the waters called for therein are now carried through the eighteen mile level of said canal and taken from said level by the undersigned and used by it for hydraulic purposes at its hydro-electric power plant situated on the northerly bank of the Maumee River at Maumee, Ohio.

The undersigned respectfully now asks a renewal of each of said leases under the terms thereof.

Very respectfully, The Maumee Valley Electric Company, by U. G. Denman, Its Attorney.

[fol. 158] STIP. EX. 20

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

No. 101,344

THE MAUMEE VALLEY ELECTRIC COMPANY, a Corporation, Plaintiff,

vs.

LOUIS A. BOULAY, Individually and as Superintendent of Public Works of the State of Ohio and as Director of the Department of Highways and Public Works of the State of Ohio, Defendant

Petition—Filed March 14, 1925

The plaintiff is a corporation, duly organized and incorporated under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the City of Toledo in said State. It owns and operates a hydro-electric plant and property situated near the northerly corporate limits of the municipality of Maumee in said State upon a strip of land lying between the Maumee River and the portion of the Miami and Erie Canal hereinafter described; and said plant and property are and for several

years last past have been used and operated, by means of the canal waters hereinafter referred to, for the generating and furnishing of electricity to a large number of customers for light, heat and power purposes in said County and its vicinity.

The defendant is the duly appointed, qualified and acting Superintendent of Public Works of the State of Ohio and Director of the Department of Highways and Public Works of the State of Ohio, and, as such, has jurisdiction and authority over the canals, the canal lands and waters of the State of Ohio, including the portion of the Miami and Erie Canal extending from the municipality of Grand Rapids, Ohio, northeastward to the City of Toledo, Ohio, and paralleling the Maumee River throughout said dis- [fol. 159] tance. The general direction of the flow of said river throughout said distance is northeasterly.

The State of Ohio maintains and for many years last past has maintained a dam in and across the said Maumee River at or about the point where the said municipality of Grand Rapids is located on said river, one of the purposes of which said dam was and is to divert a portion of the water from said river, by means of an intake, into said canal and thence by ways of said canal to the northerly end of the same in the City of Toledo, at which point the waters there remaining in said canal have been and still are discharged into said Maumee River, the level of said river being many feet below the level of said canal both at said point of discharge and throughout the portion thereof extending between the said municipalities of Grand Rapids and Toledo as aforesaid.

By so constructing said dam and diverting said water of said river into said canal and discharging the same back into said river as hereinabove described, valuable water power was and is created, and on or about the dates hereinafter mentioned the State of Ohio, through its duly constituted Board of Public Works, executed to various persons, firms and corporations, the leases of water rights hereinafter specifically mentioned, all of which said leases have, with the consent and approval of the said Board, been duly transferred and assigned to the plaintiff company, which latter is now and for many years last past has been the owner of said leases and of the water rights and privi-

leges therein and thereby demised and granted, said leases being as follows:

(1) Lease between the Stat of Ohio, by its Board of Public Works, party of the first part, and Robert J. Law, Trustee, party of the second part, dated the 12th day of March, 1895, selling and leasing to the said party of the second part the use and occupation of all of the surplus water of the Miami and Erie Canal between the municipalities of Providence and Toledo not needed for navigation or not then under lease, the municipality of Providence being located on the Maumee River opposite the municipality of [fol. 160] Grand Rapids above referred to. Said lease, which was for a primary period of thirty years from and after the 12th day of March, 1895, contains the express agreement that the party of the second part, which is the plaintiff herein, should be entitled to a renewal of said lease, for a like terms of years, for such annual rent as might be offered by the highest responsible bidder therefor, who would also agree to purchase of the said party of the second part all permanent and valuable buildings necessarily erected by said party for the convenient use of the water power thereby leased, at such price as said buildings should be adjudged to be worth by three judicious freeholders, to be chosen as in said lease set forth; and that if no such bid should be made upon the terms aforesaid and at a higher rate than the rental specified in said lease, said party of the second part should be entitled to such renewal on the terms of said lease itself. The plaintiff has requested and demanded the renewal of said lease, and, although under no obligation so to do, has offered a much higher rental therefor than in said lease specified, and no other person, firm or corporation has made any bid for said lease or the renewal thereof, or has offered to pay any rental whatsoever therefor, with the result that except for said increased rental voluntarily to be paid by the plaintiff, the plaintiff is entitled to a renewal of said lease upon the terms therein contained, and by reason of the facts aforesaid the said lease now stands renewed to the plaintiff and is in full force and effect.

(2) Lease between the said State of Ohio, by its Board of Public Works, party of the first part, and Thomas W. Studer, party of the second part, dated the 13th day of

November, 1906, selling and leasing to the said party of the second part the use and occupation of 2100 cubic feet of water per minute, the same to be taken out of the portion of said canal situated between the said municipalities of Grand Rapids and Toledo aforesaid. Said lease was and is for the period of thirty years from and after the said first day of November, 1906, and is in full force and effect.

(3) Lease between the said State of Ohio, by its Board of Public Works, party of the first part, and A. C. Tryon, [fol. 161] party of the second part, dated the 8th day of April, 1903, selling and leasing to the said party of the second part the use and occupation of 2050 cubic feet of water per minute, the same to be taken out of the portion of said canal last aforesaid. Said lease was and is for the period of thirty years from and after the 1st day of May, 1903, and is in full force and effect.

(4) Lease between the said State of Ohio, by its Board of Public Works, party of the first part, and George K. Detwiler, party of the second part, dated the 20th day of February, 1901, selling and leasing to the said party of the second part the use and occupation of 833 cubic feet of water per minute, the same to be taken out of the portion of said canal last aforesaid. Said lease was and is for the period of thirty years from and after the 1st day of May, 1901, and is in full force and effect.

(5) Lease between the said State of Ohio, by its Board of Public Works, party of the first part, and The Maumee Paper Company, party of the second part, dated the 8th day of April, 1903, selling and leasing to the said party of the second part the use and occupation of 2050 cubic feet of water per minute, the same to be taken out of the portion of said canal last aforesaid. Said lease was and is for the period of thirty years from and after the first day of May, 1903, and is in full force and effect. The plaintiff has duly kept and performed each and all of the terms and conditions of each and all of said leases on its part to be kept and performed, and the defendant has at all times accepted and is still accepting from the plaintiff the rents and services required of it by the covenants thereof.

Said leases include all of the water rights existing in and pertaining to the waters of that portion of said canal ex-

tending from the said municipality of Grand Rapids to the said plant and property of the plaintiff.

On the 9th day of April, 1902, the legislature of the State of Ohio passed an act entitled "To provide for the retention, maintenance and supervision of the canals of Ohio, their water supplies, reservoirs, dams, feeders and adjacent lands; to encourage the building of canal boats and the extension of cheap transportation"; 95 Ohio Laws, 118 et seq.; and thereby declared it to be the settled policy of the [fol. 162] State of Ohio that the said Miami and Erie Canal, together with its water supplies, reservoirs, dams, feeders and adjacent lands, extending from the City of Cincinnati to the City of Toledo, should be retained and maintained as a public canal.

Acting in good faith and in full reliance upon said Act of the General Assembly and upon the rights assured to it under said leases, the plaintiff, on or about the 14th day of December, 1910, duly entered into an agreement and supplementary lease of that date with the State of Ohio, by its said Board of Public Works, wherein and whereby, in consideration of the enlargement of the water rights granted by the State in the leases hereinabove described, the plaintiff agreed to increase the rentals to be paid thereunder and to excavate and remove from said canal a quantity of rock located in the same near the municipality of Waterville; also to remove all other obstructions in said canal throughout the 18 mile level thereof between the said municipality of Grand Rapids and the plaintiff's plant hereinabove referred to, and to raise the banks of said canal throughout the said distance, all at its own expense.

Thereafter the plaintiff duly proceeded with the excavation of said rock, the removal of said obstruction from said canal and the raising of the banks thereof, and expended upon the same a sum in excess of $50,000.00; and the plaintiff has duly performed all of the terms and conditions of said agreement and supplementary lease on its part to be done and performed, including the payment of said additional rental aforesaid.

In derogation of the rights of the plaintiff acquired by it under and by virtue of said leases, agreement and supplementary lease aforesaid, (hereinafter collectively re-

ferred to as "said leases") the General Assembly of the State of Ohio, on the 22nd day of January, 1920, passed an act entitled: "An act to abandon a portion of the Miami and Erie Canal in Lucas County, Ohio, and to provide for the sale or lease of the same to the City of Toledo, Ohio," as more fully appears in Volume 108, part 2, at pages 1138 et seq. of the Laws of Ohio; and in pursuance of the authority therein attempted to be granted, the State of Ohio attempted to sell and the said City of Toledo attempted to purchase from it all that portion of said canal property lying between the outlet lock thereof in the said City of Toledo and a point immediately below or south of the so-called Maumee Side Cut, which side cut is located south of [fol. 163] the said municipality of Maumee and therefore south of the plant and property of the plaintiff above described.

As against the rights of the plaintiff, existing under and by virtue of the said leases, the act of the General Assembly last aforesaid, in so attempting to abandon said canal, and the said attempted sale to and purchase by the said City of Toledo of said canal property were and are void and of no effect.

It was provided in said act, however, that the deed from the State of Ohio to the said City of Toledo, conveying said canal property, should except therefrom, and said conveyance should be subject to, the rights of the owners of existing leases of either canal lands or water or both, and to the rights of said owners to a renewal of said existing leases; and in the deed for said canal property, executed by the State of Ohio to and accepted by the said City of Toledo, said rights were so excepted and said conveyance was made subject thereto; notwithstanding all of which the said City of Toledo is demanding of the defendant that a sluice gate situated in said canal at the said Maumee Side Cut be so opened as to cause all of the water in said canal to flow through said Side Cut into the said Maumee River, thereby diverting from the plaintiff's plant and property the said canal water to which it is entitled under and by virtue of said leases, and the use of which is necessary and essential to the operation of plaintiff's said hydro-electric plant and property.

The fair value of plaintiff's said plant and property, installed and constructed by it in full reliance upon its rights under said leases, is not less than the sum of $300,000, exclusive of any value of or for said water rights, which rights are of themselves of great and additional value; and the proposed or any diversion of the or any of said canal water from plaintiff's said plant and property, whether by virtue of the opening of said sluice gate or otherwise, would entirely destroy the value of said plant and property except for the purposes of salvage or junk, and would also entirely destroy the value of said water rights and render the plaintiff incapable of furnishing hydro-electric current to its said customers.

[fol. 164] The defendant, in violation of the rights of the plaintiff and in utter disregard of said leases and the covenants of the State of Ohio therein contained, threatens and is about to, and unless immediately restrained and enjoined by this Honorable Court will, forthwith accede to said demand of the said City of Toledo and open said sluice gate or cause or permit the same to be opened, thereby diverting all of said water from said canal and from the plaintiff's said plant and property aforesaid, destroying the value of the plaintiff's said plant and property, ruining its said business, depriving it of its customers and of the revenues derived therefrom, rendering it impossible for the plaintiff to perform the duties enjoined upon it by law as a public utility, confiscating its property and depriving it of the same without just or any compensation and without due process of law, in violation of the Constitution of the State of Ohio and of the United States, respectively, all to the irreparable damage of the plaintiff and for which it has and can have no adequate remedy at law.

Wherefore plaintiff prays that an injunction may issue out of this Honorable Court forthwith, restraining and enjoining the defendant, individually and as Superintendent of Public Works of the State of Ohio and as Director of the Department of Highways and Public Works of the State of Ohio, his agents, employees, servants and any and all persons in any wise associated with or acting under him or them, or under his or their direction or control, from in any way preventing, interrupting, lessening, interfering

with or otherwise abridging or injuriously affecting (a) the use by the plaintiff of any and all of the canal water of that portion of the said Miami and Erie Canal extending from the State Dam and intake adjacent thereto, located in the Maumee River immediately south of Grand Rapids, Ohio, to the hydro-electric plant and property of the plaintiff located at Maumee, Ohio, or, (b) the flowage of water from the said river into said canal at said dam and intake; from diverting, causing or permitting to be diverted, either into said river or otherwise, and either at the said Maumee Side Cut or elsewhere, any of the water of said canal which, without such diversion, would and will be available to the plaintiff in said canal at its said hydro-electric plant and [fol. 165] property; from opening or causing or permitting to be opened, whether wholly or partially, the sluice gate located at or in the Maumee Side Cut in the vicinity of the south corporation line of the municipality of Maumee, Ohio, or any other sluice gate or passage the opening of which would or will injuriously affect either the volume or flowage of water in said portion of said canal extending between the points aforesaid; from closing or obstructing, whether wholly or partially, any gate or passage now available or used for the conveyance of water from said river into the said portion of said canal; from constructing or erecting and from causing or permitting to be constructed or erected, any bulkhead, dam or other structure the purpose or result of which would be to prevent or lessen the flow of water in any part of said portion of said canal; and from doing, suffering or permitting any other act or thing in any way violative of the rights of the plaintiff secured to it under and by virtue of the leases, agreement and supplementary lease executed by the Board of Public Works of the State of Ohio and now owner by the plaintiff, covering the right to use the waters of said portion of said canal; that upon final hearing said temporary injunction may be made perpetual, and that the plaintiff may have such other and further relief as, in equity, may be just and proper in the premises.

The Maumee Valley Electric Company, by U. G. Denman, J. M. Butler, Karl E. Burr, Its Attorneys.

State of Ohio,
Franklin County, ss:

William P. Wallace, being first duly sworn, deposes and says that he is the Vice-President of the Maumee Valley Electric Company, the plaintiff above named, and that the facts stated and allegations contained in the foregoing petition are true.

Wm. P. Wallace.

Sworn to before me and subscribed in my presence this 12th day of March, A. D. 1925, by the said William P. Wallace. G. E. Dean, Notary Public in and for Franklin County, Ohio.

[fol. 166] Stip. Ex. 21

Court of Common Pleas, Franklin County, Ohio

No. 101,344

The Maumee Valley Electric Company, a Corporation, Plaintiff,

vs.

Louis A. Boulay, Individually and as Superintendent of Public Works of the State of Ohio and as Director of the Department of Highways and Public Works of the State of Ohio, Defendant

Entry

This day this cause came on to be heard upon the application of the plaintiff, made in open court, for a temporary injunction, in accordance with the prayer of the petition, was argued by counsel and submitted to the Court upon the verified petition and the evidence; and it appearing to the Court that great and irreparable damage will result to the plaintiff from the matters and things alleged in the petition unless a temporary injunction shall issue f thwith and without notice, in accordance with the prayer of the

petition; that the commission of the threatened acts therein alleged would, during the litigation of this cause, produce great and irreparable injury to the plaintiff and that the said acts threatened to be committed and the said things threatened to be done by the defendant are in violation of the plaintiff's rights, respecting the subject of the action, and tending to render a final judgment herein ineffectual unless a temporary injunction be granted in the meanwhile, it is hereby ordered that the defendant, individually and as Superintendent of Public Works of the State of Ohio and as Director of the Department of Highways and Public Works of the State of Ohio, his agents, employees and servants and any and all persons in any wise associated with or acting under him or them or under his or their direction or control, be and they hereby are restrained and enjoined, pending the further order of this court, from in any way preventing, interrupting, lessening, interfering [fol. 167] with or otherwise abridging or injuriously affecting (a) the use by the plaintiff of any and all of the canal water of that portion of the Miami and Erie Canal extending from the State dam and the intake adjacent thereto, located in the Maumee River immediately south of Grand Rapids, Ohio, to the hydro-electric plant and property of the plaintiff located at Maumee, Ohio; or (b) the flowage of water from said river into said canal at said dam and intake; from diverting, causing or permitting to be diverted, either into said river or otherwise and either at the said Maumee Side Cut or elsewhere, any of the water of said Canal which, without such diversion, would and will be available to the plaintiff in said canal at its said hydro-electric plant and property; from opening or causing or permitting to be opened, whether wholly or partially, the sluice gate located at or in the Maumee Side Cut in the vicinity of the south corporation line of the municipality of Maumee, Ohio, or any other sluice gate or passage, the opening of which would or will injuriously affect either the volume or flowage of water in said portion of said canal extending between the points first aforesaid; from closing or obstructing, whether wholly or partially, any gate or passage now available or used for the conveyance of water from said

river into the said portion of said canal; from constructing or erecting and from causing or permitting to be constructed or erecting and from causing or permitting to be constructed or erected, any bulkhead, dam or other structure the purpose or result of which would be to prevent or lessen the flow of water in any part of said portion of said canal; and from doing, suffering or permitting any other act or thing in any way violative of the rights of the plaintiff secured to it under and by virtue of the leases, agreement and supplementary lease executed by the Board of Public Works of the State of Ohio and now owned by the plaintiff, covering the right to use the waters of said portion of said canal.

It is further ordered that this temporary injunction shall take effect upon the giving by the plaintiff of a bond in the sum of $500.00, executed by sufficient surety to be approved by the Clerk of this Court, conditioned to secure to the defendant the damages he may sustain if it be finally decided that said temporary injunction ought not to have been granted.

[fol. 168] And thereupon the plaintiff tendered to the said Clerk of this Court its bond in said sum executed by The Metropolitan Casualty Insurance Company of New York, as surety, and the same was duly approved by said Clerk.

R. P. Duncan, Judge.

Filed March 14, 1925. Harold C. Gockenbach, Clerk, by T. M. Ragland, Deputy.

The State of Ohio,
Franklin County, ss:

I, Harold C. Gockenbach, Clerk of the Court of Common Pleas within and for said County, hereby certify that the above and foregoing is truly taken and copied from the original entry now on file in my office.

Witnes my hand and the seal of said Court, this 11th day of May, A. D. 1925.

Harold C. Gockenbach, Clerk, by (Sgd.) Lucille Weibbing, Deputy. (Seal.)

[fol. 169] STIP. EX. 22

Columbus, Ohio, April 2, 1925.

To the Honorable Vic Donahey, Governor of the State of Ohio, Columbus, Ohio.

DEAR SIR:

Amended Senate Bill No. 148—Mr. Farnsworth

The following facts having reference to the above entitled bill are respectfully submitted for your consideration:

By the terms of the bill the General Assembly is proposing to abandon the portion of the Miami & Erie Canal extending from the state dam at Grand Rapids, Ohio, to a point in the Village of Maumee directly north of the so-called Maumee Side-Cut, located one and six-tenths miles south of the hydro-electric plant hereinafter referred to.

The hydro-electric plant is operated by means of water flowing through the portion of the canal above referred to.

The Maumee Valley Electric Company owns two grants in perpetuity from the State of Ohio entitling it to the use of a definite amount of the water impounded at the Grand Rapids dam and there diverted into the portion of the canal sought to be abandoned by the proposed bill. This water is used for the operation of a flouring mill located directly below the dam in the municipality of Providence, and the proposed abandonment would altogether destroy the water rights so owned in perpetuity.

The Maumee Valley Electric Company is also the owner of four leases calling for a portion of the canal water, none of which will expire for some years to come, together with a lease entitling it (The Maumee Valley Electric Company) to all of the surplus water in that part of the canal. The water is used for hydro-electric purposes.

The primary term of the latter lease expired on March 12, 1925, but the lease contains the express stipulation that it shall be renewable for an additional period of thirty years on the same terms as those contained in the lease itself, unless another bidder offers a higher rent for the water power and also agrees to certain other conditions

[fol. 170] stipulated in the lease. No such bidder has made any offer for the water rights.

When the question of a renewal of the lease was submitted to the Department of Public Works it was stated that the lease could be renewed except at an increased rental for the water rights, and on that theory the terms of the renewal were discussed and considered.

Subsequent investigation of the canal laws has convinced The Maumee Valley Electric Company that the then Board of Public Works had the full right and power to enter into the original lease for thirty years and to stipulate that the lease should be renewed upon the same terms as those contained in the original lease, including the payment of rental.

By reason of the foregoing facts, The Maumee Valley Electric Company believes and contends that the original lease now stands renewed for the period of thirty years upon the same terms and conditions, including the payment of rental, as are contained in the original lease. It suggests also that if, by reason of its renewal right, it is entitled to the use of the canal water at the rental provided for in the original lease, the State of Ohio should not now be demanding a higher rental for such use.

It believes, moreover, that such would be the opinion of the Attorney General of the State if the question were referred to him for consideration.

The abandonment of the canal as proposed by the bill would entirely destroy the water rights under discussion here. The claim is made, however, that the rights of The Maumee Valley Electric Company are protected by certain conditions and reservations in the bill. Reservations were, however, inserted in an act of the General Assembly passed on January 22, 1920, abandoning another portion of the same canal, and the City of Toledo, in whose favor the latter abandonment was made, is now claiming that notwithstanding those reservations, the owners of leases of canal water have no rights which are entitled to protection. The latter act is found in Vol. 108 Ohio Laws, Part 2, at pages 1138 to 41 inclusive.

The City of Toledo is the chief proponent of the present bill just as it was of the act last referred to, and The Maumee Valley Electric Company has no reason to believe

that its rights will be any more respected under the pro-
[fol. 171] posed bill than under the act of 1920.

The water power generated by the canal water in question is generally said to be the finest in the State of Ohio, and the electricity generated at the hydro-electric plant referred to is used for the purpose of supplying light, heat and power to the public.

The Maumee Valley Electric Company believes that it can be demonstrated that the proposed abandonment of the canal is not in any sense necessary in the interest of the water supply for the City of Toledo.

In conclusion, it is respectfully submitted that the thirty year lease of the canal water to The Maumee Valley Electric Company stands renewed upon the same terms and conditions as those applicable to the primary term of the lease, and that is the position to which the Company adheres; that apart from that consideration, the Company owns four unexpired leases of water rights which, in all good conscience, are entitled to the protection of the State; that in addition to those four leases the Company owns two grants of water rights in perpetuity, the value of which would be altogether destroyed by the proposed abandonment.

It is further respectfully submitted that for any and all of the above reasons the bill in question should receive the unfavorable action of the Chief Executive.

Respectfully submitted.

The Maumee Valley Electric Company, by —— ——,
Its Attorneys.

[fol. 172] Stip. Ex. 23

In United States District Court, Southern Ohio

No. 334. In Equity

The Maumee Valley Electric Company, Plaintiff,
vs.
George F. Schlessinger et al., Defendants

Under the stipulation between the parties hereto, plaintiff offers in evidence sections from the constitutions of Ohio and the general and special laws of Ohio listed as follows:

1. Section 1 of Article I of the Constitution of Ohio of 1802.

2. Section 12 of Article VIII of the Constitution of Ohio, as adopted in 1851.

3. Section 12 of Article VIII of the Constitution of Ohio, as amended September 3, 1912.

Acts of the General Assemblies of Ohio and Indiana and of Congress of United States

4. Act passed February 23, 1820, 18 O. L. 147, Vol 2, Chase's Statutes, page 1131, entitled: "An act respecting a navigable communication between Lake Erie and the Ohio River."

5. Act passed January 31, 1822, 20 O. L. 31, Vol. 2, Chase's Statutes, page 1220, entitled: "An act authorizing an examination into the practicability of connecting Lake Erie with the Ohio River by a canal."

6. Act passed January 27, 1823, 21 O. L. 24, Vol. 2, Chase's Statutes, page 1255, entitled: "An act supplementary to the act", last above mentioned.

7. "An act in addition to the act authorizing an examination into the practicability of connecting Lake Erie with the Ohio River by a canal", passed February 23, 1824, Vol. 3, Chase's Statutes, page 1963.

8. Act passed February 4, 1825, 23 O. L. 50, Vol. 2, Chase's Statutes, pages 1472-76, entitled: "An act to provide for the internal improvement of the State of Ohio by navigable canals."

9. An act supplementary to the above acts, passed January 18, 1826, Vol. 3 Chase's Statutes, page 1516.

[fol. 173] 10. "An act for the protection of the Ohio canals", passed January 31, 1826, Chase's Statutes Vol. 3, page 1525.

11. "An act to provide for the increase of the Canal Fund by the purchase and sale of real estate", passed February 7, 1826, Vol. 3 Chase's Statutes, page 1527.

12. "An act in addition to the act entitled an act supplementary to the act providing for the internal improvement of the State of Ohio by navigable canals", passed February 8, 1826, Vol. 3 Chase's Statutes, page 1528.

13. Act of the Congress of the United States, passed March 2, 1827, granting lands in the State of Ohio to the State of Indiana for construction of Wabash & Erie Canal.

14. "An act to amend the act for the protection of the Ohio canals", passed February 11, 1828, Chase's Statutes Vol. 3, page 1598.

15. An act by the Congress of the United States, passed May 24, 1828, Vol. 4 Statutes at Large, page 305, donating lands in Ohio to the State of Ohio to be sold to provide funds to construct the Miami Extension Canal from Dayton, Ohio, to Lake Erie.

16. "An act declaring the assent of the State of Ohio to the provisions and conditions of an Act of Congress", passed December 22, 1828, Chase's Statutes Vol. 3, page 1619. Through this act the Legislature of Ohio assented to and accepted the terms and conditions of the Act of Congress passed May 24, 1828.

17. "An act to authorize Canal Commissioners to examine into the practicability of extending the Miami line of canal from Mad River, near Dayton, to Defiance at mouth of Auglaize River", passed February 9, 1830, Chase's Statutes Vol. 3, page 1644.

18. "An act in addition to the several acts for the protection of the Ohio canals and for other purposes", passed February 18, 1830, Chase's Statutes Vol. 3, page 1659.

19. "An act constituting proceeds from sales of canal lands a portion of the general Canal Fund", passed February 23, 1830, 28 O. L. 61.

20. An act of the Congress of United States extending to the State of Ohio the time in which to complete the canal from Dayton to Lake Erie, passed April 2, 1830, Vol. 4 Statutes at Large, page 393.

21. "An act to provide for the purchase of water privileges", passed March 3, 1831, Chase's Statutes Vol. 3, page 1862.

22. "An act to authorize the selection, location, sale and application of the proceeds of lands granted by Congress to aid the State of Ohio in extending the Miami Canal", passed December 31, 1831, Chase's Statutes Vol. 3, page 1915, 30 O. L. 14.

[fol. 174] 23. "An act to amend the act to provide for the internal improvement of the State of Ohio by navigable canals", passed February 13, 1832, Chase's Statutes Vol. 3, page 1917.

24. Resolution by the General Assembly of the State of Indiana conveying to the State of Ohio the lands heretofore granted by Congress to the State of Indiana for construction of Wabash & Erie Canal, passed February 1, 1834.

25. Resolution by the General Assembly of the State of Ohio, passed February 24, 1834, accepting the conveyance of Ohio lands by the State of Indiana to the State of Ohio, which conveyance by Indiana was made pursuant to and under authority of Section 4 of the Act of Congress above mentioned, passed May 24, 1828, Vol. 4 Statutes at Large, page 305.

26. An act providing that all moneys arising from the sale of lands, together with the net proceeds of all tolls, fines and water rents derived from the canal north of Dayton, should be subject to Commissioners of Canal Fund, passed February 27, 1834, 32 O. L. 213.

27. An act directing the Board of Public Works of Ohio to establish the line of the Wabash & Erie Canal from the east line of the State of Indiana to suitable point into Lake Erie, and put the work under contract and carry it along as funds from the sale of land should be received or other money supplied, passed March 3, 1834, 32 O. L. 308.

28. "An act to provide for the extension and completion of the Miami Canal north of Dayton", passed March 8, 1836, 34 O. L. 331.

29. An act appropriating money for the purchase of suitable lands for hydraulic purposes, passed January 12, 1837, 35 O. L. 6.

30. An act appropriating money for purchase of lands

and developing of hydraulic power on Miami Canal from Ohio River to Defiance, passed April 3, 1837.

31. "An act relating to the management and sale of certain lands of the State of Ohio", passed March 19, 1838, 36 O. L. 85, Swan's Statutes of Ohio 1841, pages 166 to 170 inclusive.

32. "An act to provide for the protection of the canals of the State of Ohio; the regulation of the navigation thereof and for the collection of tolls", passed March 23, 1840, 38 O. L. 87, Swan's Statutes of Ohio 1841, pages 174 to 200.

33. Swan's Statutes of Ohio of 1841, pages 744 to 764 inclusive.

34. An act directing Board of Public Works to select such of the canal lands belonging to Ohio as might be nec- [fol. 175] essary for the use of water power on the Wabash & Erie Canal and the Miami Canal, passed March 7, 1842, 40 O. L. 72.

35. An act providing for the completion of all parts of the Miami Extension Canal not then under contract, passed February 28, 1843, 41 O. L. 43.

36. "An act in relation to the Miami Canal, the Miami Extension and the Wabash & Erie Canal", passed March 14, 1849, 47 O. L. 44.

37. Revised Statutes of 1880, Sections 7775 to 7779 inclusive, Bates' Annotated Statutes of 1906, Section 218-86 et seq.

38. General Code of 1910, Sections 14009 to 14013 inclusive.

39. "An act to amend Section 14009 of the General Code relating to the sale and leasing of surplus waters of the canals, feeders and dams of the State", passed March 21, 1917, 107 O. L. 418.

Leasing of Entire Public Works

40. "An act to provide for the leasing of the public works of the State", passed May 8, 1861, 58 O. L. 117.

41. Joint resolution of the General Assembly of Ohio extending the lease provided for in the above mentioned act for a period of ten years, passed April 11, 1867, 64 O. L. 330.

Abandonment Acts

42. "An act to authorize the city of Cincinnati to enter upon and occupy a part of the Miami & Erie Canal as a public highway and for sewerage purposes", passed March 24, 1863, 60 O. L. 44.

43. "An act to authorize the city of Toledo to enter upon and occupy a part of the Miami & Erie Canal as a public highway and for sewerage and water purposes", passed March 26, 1864, 61 O. L. 74.

44. "An act to provide for the vacation of the Grandville sidecut, known as the Grandville feeder, emptying into the summit level of the Ohio canal in Licking County", passed April 11, 1866, 73 O. L. 198.

45. "An act to authorize the vacation and sale of a portion of the Hocking canal", passed March 6, 1873, 70 O. L. 306.

46. "An act to provide for the abandonment of a certain portion of the Hocking canal lying eastward of the lock at the village of Chauncey, Athens County", passed April 11, 1876, 73 O. L. 168.

47. "An act to provide for the abandonment and sale of the Wabash & Erie Canal and six-mile reservoir in Paulding County", passed April 12, 1888, 85 O. L. 207.

[fol. 176] 48. "An act to abandon the Wabash & Erie Canal in Paulding County", passed March 3, 1891, 88 O. L. 72.

49. "An act to provide for the abandonment of the Hocking canal for canal purposes and for leasing the same to the Columbus, Hocking Valley & Athens Railroad Co.", passed May 18, 1894, 91 O. L. 327.

50. "An act to provide for the abandonment of the Walhonding canal", passed April 27, 1896, 92 O. L. 380.

51. "An act to abandon a portion of the Miami & Erie Canal in Lucas County and to provide for the sale or lease of the same to the city of Toledo, Ohio", passed January 22, 1920, 108 O. L., part 2, pages 1138 to 1141.

52. "An act to abandon for canal purposes that portion of the Miami & Erie Canal between the Maumee River at Defiance, Defiance County, Ohio, and a point five hundred feet north of the Middletown dam, near the north corporation line of the city of Middletown, Ohio, and to provide for the leasing of certain portions of the same to cities, villages and other political subdivisions of the State and for granting of leases outside of municipalities, etc.", passed March 25, 1925, 111 O. L. 208 to 214.

53. "An act to abandon a portion of the Miami & Erie Canal in Lucas County, Ohio, and to provide for the sale of the same to the County Commissioners of Lucas County, Ohio", passed March 27, 1925, 111 O. L. 367 to 370.

54. "An act to abandon for canal and hydraulic purposes that portion of the Miami & Erie Canal from a point five hundred feet north of the State Dam, near the corporation line of the city of Middletown, Paulding County, Ohio to the present terminus of said canal at St. Bernard in the city of Cincinnati, Hamilton County, Ohio", passed April 21, 1927, 112 O. L. 388 to 390.

55. "An act to abandon a portion of the Miami & Erie Canal in Lucas County, Ohio, and to devote the same to highway and other purposes and to repeal all acts in conflict therewith", passed over the Governor's veto May 11, 1927, 112 O. L. 360 to 363.

[fol. 177] STIP. EX. 24

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

No. 534. In Equity

THE MAUMEE VALLEY ELECTRIC COMPANY, Plaintiff,

vs.

GEORGE F. SCHLESSINGER et al., Defendants

Testimony of Harden L. Crawford, E. A. Dorszeski, and Lewis E. Ayres

HARDEN L. CRAWFORD, president of the plaintiff company would, if duly called and sworn as a witness, testify as follows:

My name is Harden L. Crawford. I have been president of the plaintiff, The Maumee Valley Electric Company, since 1913. Prior to that I was its treasurer.

The various leases in evidence here of this company were acquired by it during the time beginning with the year 1900 and ending with the year 1913. There are no other leases on water from the canal between Grand Rapids and Toledo besides the plaintiff's seven leases in evidence here and The Toledo Grain & Milling Company lease, and the grant to Peter Minor by the State of Ohio in 1842 permitting him, his heirs and assigns, to take water from the canal at the town of Providence, Ohio, above the Guard Lock or Lock No. 9 of said canal, for hydraulic power to be used in the operation of flour and sawmills at that point on the north bank of the Maumee River and just across that river opposite the Village of Grand Rapids, Ohio, where a flour mill is still operated by waters from the canal under that grant.

I investigated these properties before coming into plaintiff company and before acquiring the leases. After the Law lease we made exhaustive examinations, both as to legal situation on the leases and as to the possibilities of the physical development of the company, both by engineers and through our attorneys, and we have relied and did rely absolutely that our leases meant what they said; that the Legislative Acts, particularly that of 1902 meant what that Legislative Act said with regard to the State maintaining the canal, before we put in our money. At that time the plant was a small one, with one flume and one small waterwheel, with capacity of about 400 horse power, belted to a generator of about the same capacity.

We raised the building about double its height and installed in it 2,000 kilowatts of steam capacity, with 800 horse power of boilers, and later removed those 800 and installed two 500, making 1,000 horse power boilers in that plant. We built a complete new building to house the enlarged water end. We put two new flumes, each one of more than double the capacity of the one old flume; installed two new 750 kilowatt Allis Chalmers wheels, directly connected to generators. I refer to water-wheels and generators. We dredged the canal from Lock 45 all the way up the canal; I don't know just how far, but the cost was over $53,000 just

for dredging. This dredging was done under the supple-
[fol. 178] mentary lease introduced in evidence here. We put in new dynamos directly connected with those water-wheels. The water-wheels were directly connected to 750 kilowatt generators. The purpose of the auxiliary steam plant is to make up such deficiency as may be required in case of failure on the part of the water to generate a sufficient amount of electricity. When we first came out here, Maumee and Perrysburg were quite small, little places. They have grown now, together with the extension of those lines which came to the City of Toledo on both sides of the river, and there has been no question as to the market for all the power that plant could generate. We were about eight miles originally from the city limits. I think now the city lines come out to about a mile or a mile and a half from the plant so it would be, practically, that the city had been extended from time to time and it has come out on the River Road to within a mile and a half of our plant. If the water power were not there or was taken away, we would lose everything we put into it.

I put up the money to build the plant and am confident that if the plant is done away with I will lose my money. It will be wiped out. The only value of the plant will be the salvage value of the buildings and the junk value of the machinery.

Except at such times as there has been a break in the canal, there has never been an occasion when the water was not sufficient to run at least one wheel, at the lowest period, without steam. We have three wheels with an hourly capacity of 750 kilowatts, although that does not necessarily mean that we are using our capacity for 24 hours per day during all of the 365 days in the year. At some time in every year the water fails sufficiently to materially reduce the production of the plant. The steam standby plant was installed to take care of such emergencies. We acquired the Purdy lease, the Tryon lease, Studer lease, Paper Mill lease and Detweiler lease in order to protect our Law lease and to make available to us all of the water in the canal. In other words, we acquired those leases because the use of it by others would have prevented our using it at the plant.

Throughout all of the time that the plant has been operated by means of the water power provided for in the leases,

it has produced and is still producing electricity supplied to the public for light, heat and power purposes.

E. A. DORSZESKI (now E. A. DORSEY) would, if duly called and sworn as a witness, testify as follows:

My name is E. A. Dorszeski. I live at Chicago, Illinois. By occupation I am a member of the firm of Hagenah and Erickson, consulting engineers engaged in the appraisal of public utilities, rate investigation, appraisal of water rights for municipalities, commissions, courts and corporations. In estimating flow of water at various plants in the country, under comparable circumstances to those present in the Miami and Erie Canal between Grand Rapids and Maumee, Ohio, I have taken part and assisted, and also made reports personally on water power rights for the following Companies: Portland Railway Light and Power Company, Portland, Oregon; Pacific Power and Light Company, Portland; properties in Washington, Idaho, Montana; Alabama Power Company, operating extensive hydraulic plants in Alabama; Toronto and Niagara Power Company, operating a hydraulic plant at Niagara Falls, transmitting energy to Toronto, Canada; and the Montreal and Ontario Power Company. In my appraisal work, I have had charge and directly assisted in the appraisal of $1,750,000,000 worth of public utility properties in the United States and Canada, such property consisting of street railway, telephone, electric light, water and steam railroad properties. These were appraised in part on behalf of states, corporations and municipalities.

[fol. 179] I have inspected the canal and plant of The Maumee Valley Electric Company, including the portion of the canal from Grand Rapids to Maumee, which carries the water under discussion in this case to that plant, and have made a careful inspection of the dam, the canal, the power plant owned by The Maumee Valley Electric Company, the generating equipment contained therein and the steam plant adjacent to it. I find the flow or head of water in that portion of the canal is somewhere between 59.4 to 61 feet. I have examined records compiled by the government as to the available flow of water and such statistical data in the records of the company as to the number of kilowatt-hours generated by month for the eleven-year period ending with

1924, and in mentioning the number of kilowatt-hours generated by such records, I refer to plaintiff's Exhibit 14. I have investigated and estimated the value of the water power at the plant of plaintiff company.

I find from the reports prepared by the Government that there is available for this particular plant about 422 second feet of water. This amount of water is capable of generating approximately 10,000,000 kilowatt-hours per year. There is available a total of 536 second feet, and the difference between that amount and 422 second feet passes the plaintiff's plant and goes on down to the plant of The Toledo Grain & Milling Company in Toledo; in other words, approximately four-fifths of all the water in the canal is available to the plaintiff. Of course when the water gets so low that there is not sufficient capacity to turn over the wheels, it cannot be used. I estimated that the plant is capable of generating over a twelve-month period approximately 10,000,000 kilowatt-hours. I have estimated a reproduction cost of a plant with 2,000 kilowatt capacity to cover the necessary equipment for generating this energy. In estimating, I have only taken into consideration that part of the property owned by the company and have excluded the dam and canal which is owned by the State. My estimate shows that for $200,000, roughly, you could reproduce the electrical appliances, water-wheels, pen stocks, cabling, etc., in the plant. This plant I have estimated would require about $4,500 yearly for depreciation charge; allowing 8% return on $200,000, would mean $16,000 per year; and one per cent for maintenance, making a total fixed value charge cost of $22,500 a year. I find that it costs about 1.8 mills to generate a kilowatt-hour at this plant. This is for labor, rental charges, miscellaneous supplies and lubrications used in operating the hydraulic plant. The fixed charges for depreciation, return on investment and maintenance, would amount to 2.3 mills per kilowatt-hour on this generation. I have also estimated a steam plant of sufficient capacity to generate 10,000,000 kilowatt-hours per year. I find that an approximate cost of a steam plant would be $275,000. Depreciation on the plant—as this class of property depreciates more rapidly—is $11,000; return on the investment, 8% of $275,000 is $22,000 a year; maintenance $5,500 a year, making a total charge for deprecia-

tion, return on the investment and maintenance $38,500 per year, or 3.9 mills per kilowatt-hour. I have estimated that energy on the basis of coal costs in the Toledo district and surrounding points where this energy may be transmitted, would be 3.8 mills per kilowatt-hour, or a total of 7.7 mills to supply a kilowatt-hour of steam energy. Taking this on the basis of 10,000,000 kilowatt-hours, would show a charge of $41,000 for hydraulic energy and $77,000 for steam energy; the difference between the two being $36,000 in favor of the hydraulic energy, or the saving that could be made by hydraulic plant as compared with a steam plant. Capitalizing the $36,000 on the basis of 8% would give a hydraulic power value of $450,000. This value is exclusive of any physical property. That represents my judgment based on these calculations as a minimum value of the hydraulic power.

Stoppage or cessation of water now flowing through the canal would destroy the investment that is made in the hydraulic part of the plant and destroy the investment in the steam plant, which is a part of the investment there. It would affect the steam plant because it would be uneconomical to operate a steam plant of that capacity if not run in [fol. 180] connection with a hydraulic plant. It is too small and could not compete with the energy turned out by more modern and larger plants. This steam plant is constructed to take up the load of the hydraulic plant if insufficient amount of water in the canal to carry the load. Because of this hydraulic plant's proximity to the City of Toledo, it is more valuable than a hydraulic plant located say within twenty or fifty miles or even farther from the center, or market for the energy. This plant is located where the market is right at its back door and it is possible to sell this energy generated there without putting it through transformers. The investment, therefore, is far less than in a plant farther away.

I cannot say what the production of kilowatt-hours at this plant is at present, but over an eleven-year period the average has been 7,700,000. I examined the plant but would not be able to give you any definite figure on the investment unless I appraised it in detail. I know it is considerable. It is in excess of $200,000.00. In basing my estimate of 10,000,000 kilowatt-hours on the flow of the canal,

I assume that amount of water available for transmitting will be there and I am basing my estimate on 422 second feet out of the 536 second feet that are available.

Other leases above this plant which would take part of the water from the canal would reduce the flow and reduce the estimate. In making this estimate, I did not take into consideration any water that might be necessary for navigation. I took the available water in the canal at the present time and considered the canal as a stream for furnishing hydraulic power and the amount of water in it would give this amount of hydraulic energy.

LEWIS E. AYRES would, if duly called and sworn as a witness, testify as follows:

My name is Lewis E. Ayres. I live at Ann Arbor, Michigan. By profession, I am a civil and hydraulic engineer. I am a member of the firm of Ayres, Lewis, Norris & May. I am a graduate of the University of Michigan, civil engineering course. I have been engaged primarily during the past seventeen years in the designing and construction of water power plants and water-works plants, appraisals of such properties, and reports upon properties of that character. I have had during this time responsible and intimate connection with seventeen projects in Michigan, Indiana, Iowa, Minnesota, involving dams or power houses or both. Among these I would name power plant of the City of Sturgis, Michigan, on the St. Joe River; five dams and power houses on the Huron River near Detroit for the Edison Company; five of the engine power houses for Detroit Edison Company; three dams for Great Northern Power Company at Duluth; a dam for Des Moines Electric Company, Des Moines, Iowa; power house reconstruction for the W. Pulp and Paper Company at Sartel, Minnesota; design of dam on Mississippi River for United States Government; small hydraulic plant at Syracuse, Indiana; power plant for the Shenbayane Electric Company, Shenbayane, Michigan; one for Alpena Power Company, completed last year; one at Big Rapids, Michigan; one for Great Lakes Power Company, Caro, Michigan; and we are building one now for City of Bellaire, Michigan, and finishing one for Detroit Edison Company.

In appraising water power companies under Professor H. E. Riggs, I appraised the Edison Sioux Electric Company's properties. I had charge of the appraisal of the electrical department for the Central District of Chicago in 1915 and 1916; made or had connection with appraisals of the five plants of the Edison Company; plant of the Alpena Power Company; properties of the Western Hydro-Electric Company in Michigan; reports on water values, values of water power, and comparative values of steam, for Great Northern Power Company; and a number of other smaller ones.

[fol. 181] I am president of the Detroit Section of American Society of Civil Engineers and am member of several national engineering societies: American Association Civil Engineers; American Water Works Association; Michigan Engineering Society, etc.

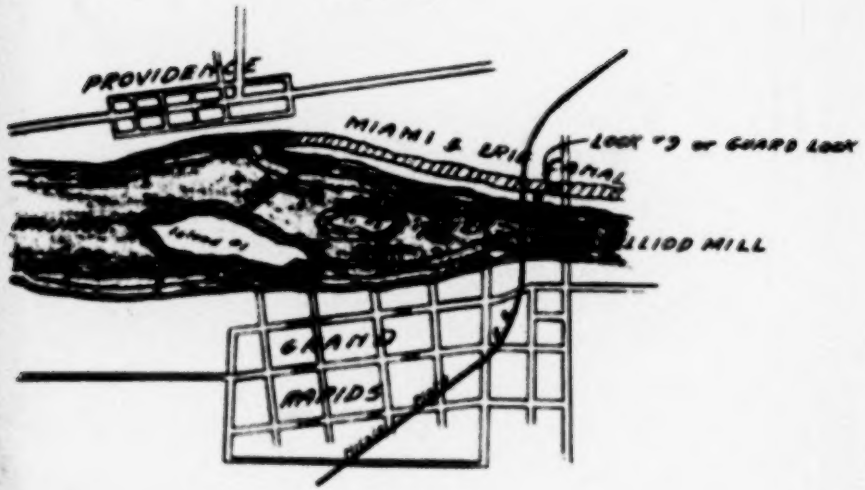
I have made an inspection of the water power of the Maumee Valley Electric Company along the stretch of the Miami and Erie Canal, extending from Grand Rapids to the plant of that company. I made no direct measurement of the flow of the water. I obtained the head available from the records of the company and took in my computations sixty feet as an average head. I computed the value of that water power and used as basis for determining the value of these water rights a so-called comparative method, or a value based upon what other willing buyers have paid for water rights under comparable conditions in our similar markets and of about the same size and based my value on so much per theoretical horse power of water power available, using a figure of $150 for theoretical horse power. Used that figure because in cases I know about under similar conditions, where the water rights are a smaller proportion of the total investment, that amount has reasonably been paid. The smaller the amount of money necessary in construction work, the larger the value in water rights for a property of good size. If I were estimating the value of this property here for the purpose of purchase or sale, $150, in my opinion, per horse power is a minimum figure. In arriving at a valuation of this property, I used an average head of sixty feet and an average flow of 420 cubic feet per second, because that is the average flow that appears to be available from the records of the com-

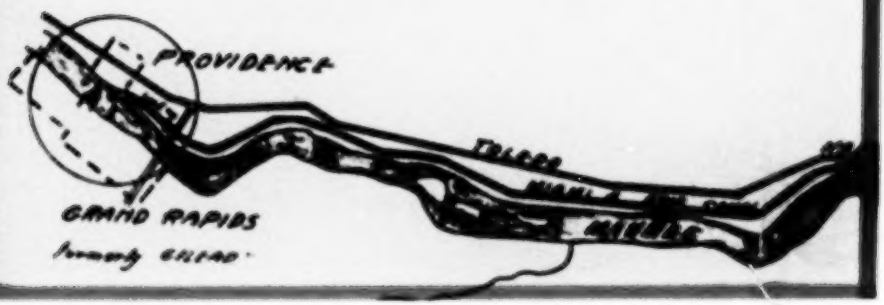
pany. That head and flow produce a theoretical horse power of something over 2700 based on a similar plant that I have in mind in particular, now being completed by Detroit Edison about same distance from Detroit market and related about the same way to the larger power plants of the Edison Company. They are just finishing a plant which has a theoretical horse power of 1870, the water rights of which have cost them just about an even $150 per theoretical horse power. In this plant, the construction involved is about, physical construction, $600,000; and the water rights about $280,000. This plant is about twenty miles from Detroit and produces its current in conjunction with the steam plants of Detroit Edison Company.

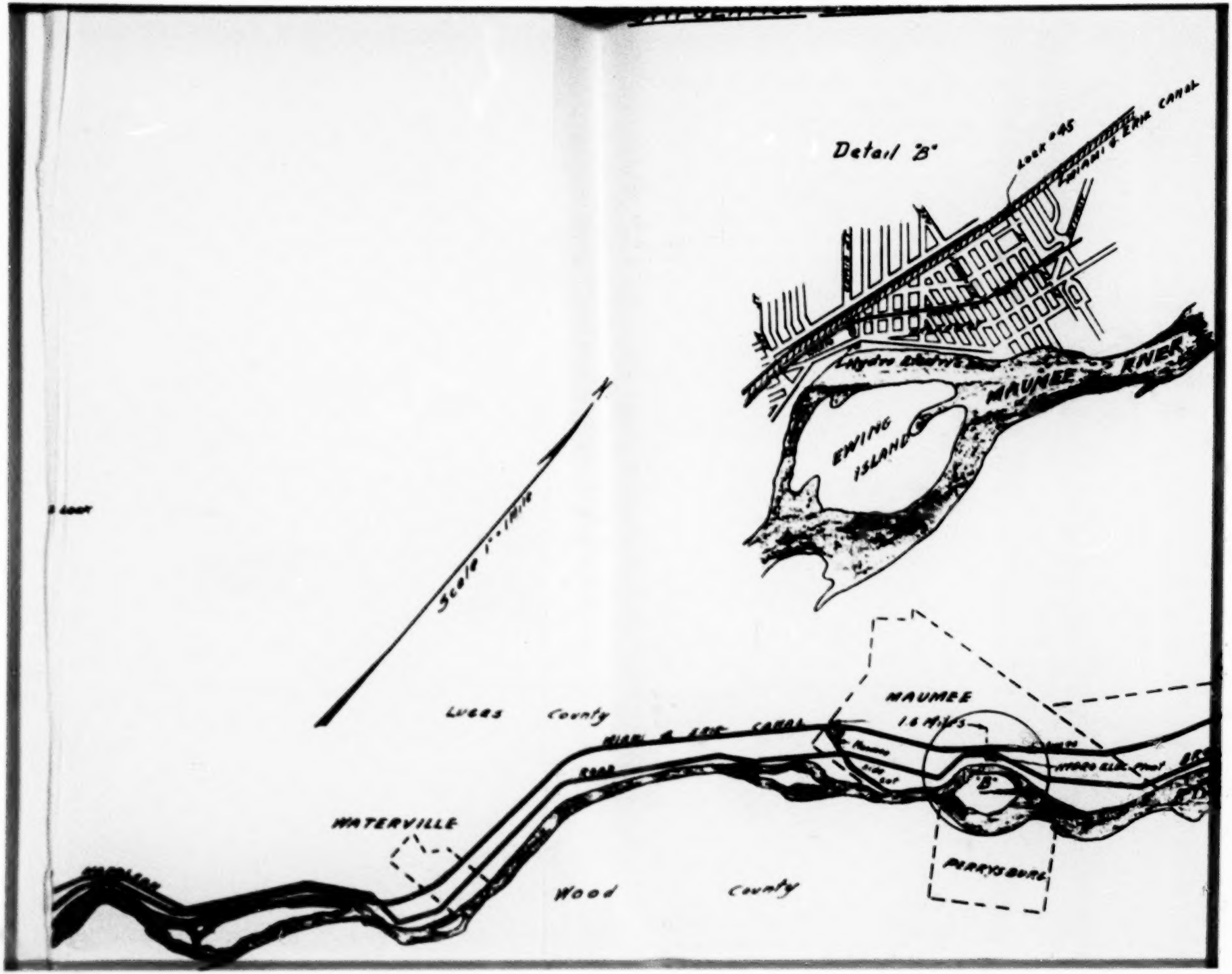
This plant in compariosn is similarly located as regards market, as regards competition or steam power plant production, and produces about the same amount of power, more power, in fact, than the Detroit Edison plant. This plant, based on that flow, should produce with improved machinery at least 10,000,000 kilowatt-hours annually; and the average annual output of the particular plant to which I refer is, roughly, 8,000,000 annually. The same comparison could be applied to the other plants on the Huron River of the Edison Company and lead to similar results. It is a basis of what a reasonable buyer is willing to pay for this right under similar conditions. The figure of $400,000, it seems to me, in my judgment is a minimum on that basis for the value of the water power rights at the site of The Maumee Valley Electric Company, and that is exclusive of plant proper.

My estimate is not based on an uninterrupted flow of water at a normal rate of 422 second feet. You never have a water power plant with absolutely an uninterrupted flow. It is based on the average flow annually of 420 second feet and an average head of 60 feet. I have undertaken to consider the factor that during the summer months the canal might be practically dried up so that no water would be available for hydraulic power, and have also considered the records of the flow of the river realizing that it get very low at times in the summer, and realizing also the flow of the seepage in the dam above. The same thing is true in the plants upon which I base my values. And it is based on the assumption that the canal will always be able to carry the

Detail "A"


PROVIDENCE
MIAMI & ERIE CANAL
LOCK "3" or GUARD LOCK
ALLIED MILL
GRAND RAPIDS


PROVIDENCE
GRAND RAPIDS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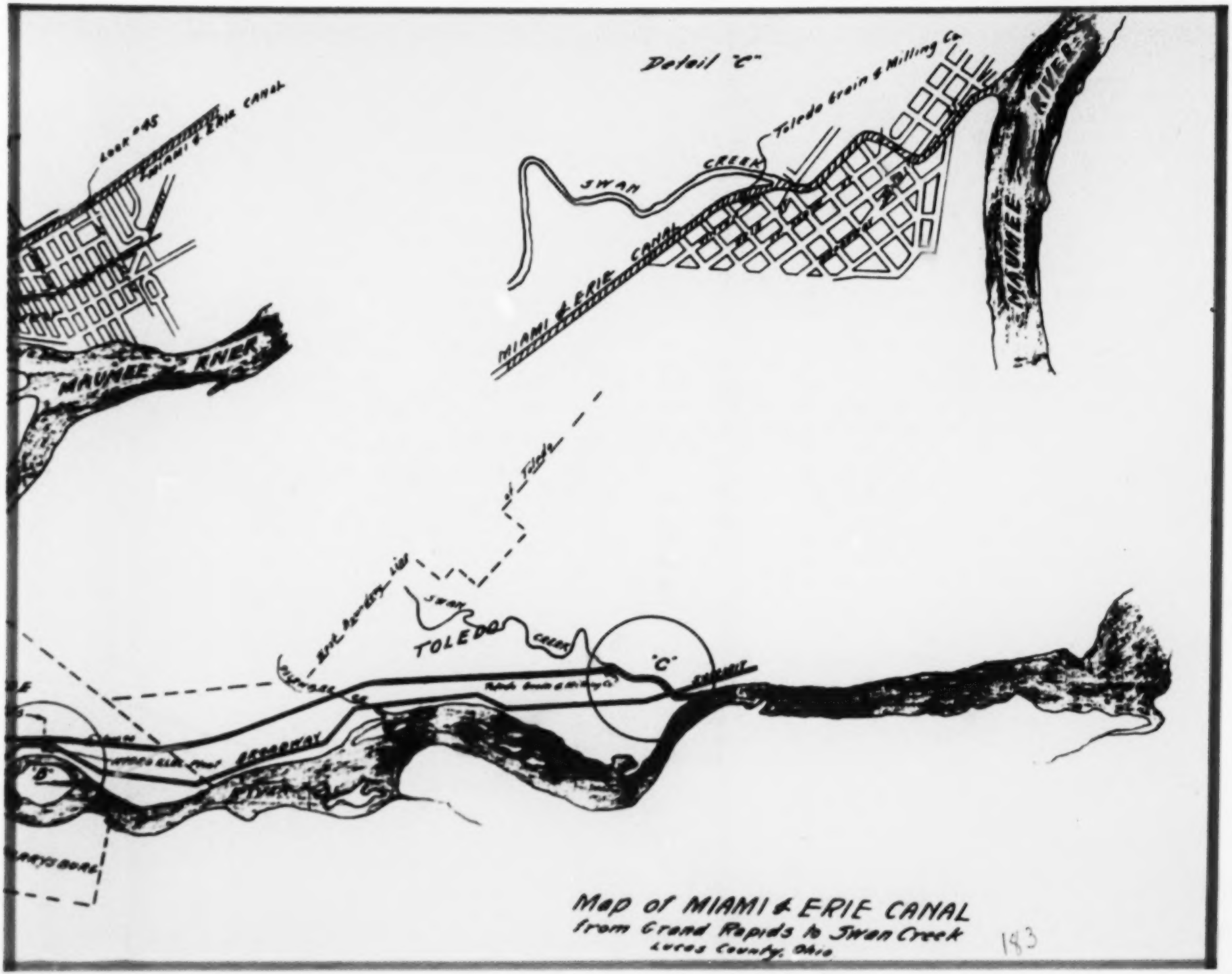
LOCK #45
MIAMI & ERIE CANAL
MAUMEE
EWING ISLAND
Scale 1" = 1 Mile
Lucas County
MAUMEE
16 Miles
MIAMI & ERIE CANAL
ROAD
WATERVILLE
Wood County
PERRYSBURG



Map of MIAMI & ERIE CANAL
from Grand Rapids to Swan Creek
Lucas County, Ohio

183

amount of flow necessary to get that average, 420 second feet. In making this estimate, I have not considered it as a canal for purposes of navigation, but as a mill-race for [fol. 182] purpose of hydraulic power at least to the extent of 420 second feet. I understand that to be their rights. That is not all the water available there. The canal has a capacity flow, from the measurements that have been made and the records I have seen, something over 500 second feet, and some of that water, I did not measure it further, but a considerable amount of water was flowing on by Lock 45 further down the canal. If there were water leases above by which water was taken for hydraulic power, it would reduce the flow available at that point, of course.

The foregoing statements by Messrs. Crawford, Dorsey and Ayres, respectively, are accepted and admitted in evidence in lieu of their oral testimony to the facts therein stated, and with the same effect as though they had appeared and orally tsetified thereto in this cause.

(Here follows Stipulation Exhibit 25, marked side folio page 183)

[fol. 184] IN UNITED STATES DISTRICT COURT

No. 534. In Equity

THE MAUMEE VALLEY ELECTRIC COMPANY, Plaintiff,

vs.

GEORGE F. SCHLES(S)INGER, as Superintendent of Public Works and Director of the Department of Highways & Public Works of the State of Ohio; The County Commissioners of Lucas County, Ohio; The Village of Maumee, Ohio; The Village of Waterville, Ohio, and The City of Toledo, Ohio, Defendants

Before Donahue, Circuit Judge; Hickenlooper and Hough, District Judges

(Under authority of Section 266 Judicial Code)

OPINION—Filed Sept. 7, 1928

HOUGH, District Judge:

The plaintiff, a corporation, was organized for, and is in the business of generating and supplying electricity to the public for light, heat, and power purposes, and in connection with that business is chartered to hold property and acquire and hold leases and contracts for water to be used in the generation of electricity through hydro-electric power plants. It holds by assignment and under its charter powers owns, certain leases and grants from the state providing for the use of surplus water from the Miami & Erie Canal. Of the seven leases and grants so owned, the Purdy Quit Claim grant of December 8th, 1845, acquired April 27th, 1910, the Studer lease of November 13th, 1906 acquired [fol. 185] December 11th, 1913, the Tyron and the Maumee Paper Company leases, dated April 3rd, 1903 and acquired respectively in 1904 and 1912, are only indirectly involved in this case, the water authorized to be used under their terms being at places and in manner different from the location and method used at plaintiff's plant. The other three leases, that of Robert J. Law, dated March 12th, 1895, acquired September 11th, 1900, that to George K. Detweiler, dated February 20th, 1901, acquired January 25th, 1916,

and the supplemental lease to the Law lease, dated December 10th, 1910, deal with hydraulic power in the vicinity of plaintiff's plant at Maumee, and constitute the real basis of its claims.

These leases were made for terms of thirty years, with provisions for renewal. The Law lease conveyed the surplus water of the canal between Providence and Toledo, not needed for navigation, and not at the time of conveyance under lease. At the time of the assignment of the Law lease, to-wit: in 1900, the plaintiff company acquired land and constructed a small hydro-electric plant thereon at the location of its present plant. In 1910, when the supplemental lease was made, in order to secure an increase in the flow of water, the plaintiff agreed to remove the rock bars in the canal as well as other obstructions on the 18 mile level [fol. 186] between Grand Rapids and Lock No. 45, raise the banks of the canal in certain places, and pay the expense of a proper patrol system and pay an increased rental for the use of water granted under the terms of the Law lease. The plaintiff having also acquired the Tyron lease and the Purdy grant, then reconstructed and rebuilt its hydro-electric plant, greatly increased its capacity, enlarged the water flume, deepened and widened the canal from Grand Rapids to Lock No. 45, and made other improvements at a cost and expense of more than $50,000.

The defendant, Schlesinger, as Superintendent of Public Works and Director of Highways & Public Works of the State of Ohio, is the real party defendant in interest by virtue of the mandate of the General Assembly of Ohio contained in the Act of May 11th, 1927, 112 O. L., 360,—the constitutionality of which is raised in this case. The Act purports to abandon that portion of the Maumee & Erie Canal in Lucas County, Ohio, for both canal and hydraulic purposes, commencing at a point just below the head of the Maumee side-cut near Maumee, Ohio, thence southwesterly to a point where said canal joins with the Maumee River, being a section of canal 16.5 miles long, and designated for the purposes of this case as Lineal Part No. 2. The Act [fol. 187] provides that the title of lands and waters be reserved to the state, and that the same shall be held by the state for the purpose of constructing thereon a highway, at such time in the future as it may find proper and convenient.

It also provides that all leases heretofore granted for canal or hydraulic purposes on Lineal Part No. 2 shall become null and void on and after sixty days from the taking effect of the Act. It places Lineal Part No. 2 under the supervision and control of the State Highway Director, and commands that official within sixty days from the taking effect of the Act, to drain the water from it and prevent the water of the Maumee River from flowing into or through the abandoned portion. The defendants other than the Director of Highways are interested and proper parties, although not necessary parties.

The plaintiff's plant, for the operation of which the leased water is used, is located at Maumee, Ohio, between the canal and the Maumee River, adjacent to a section of the canal known for the purposes of this case as Lineal Part No. 1, beginning at the northerly terminus of Lineal Part No. 2, and being 8.85 miles in length. The situs of the plant is 1.6 miles northerly of the junction of Lineal Parts Nos. 2 and 1,—(the water of the canal flows northerly).

[fol. 188] The plaintiff company in its bill seeks injunctive relief against the Superintendent of Public Works and Director of the Department of Highways & Public Works of the state, enjoining him from carrying out the mandates and commands of the General Assembly as expressed in the Act passed by it May 11th, 1927, for the reasons among others as claimed, that the Act is contrary to section 10 of Article I of the constitution of the United States, and section 1 of Article XIV of the amendments to that constitution, as impairing the obligation of plaintiff's leases, agreements and grants, and is depriving plaintiff of its property without due process of law, based upon the contention that the Act does not contemplate the payment of a just compensation to plaintiff, and does not take into account plaintiff's vested property rights.

The case is finally submitted to the court upon the issues joined by the pleadings, affidavits, the written stipulation of facts, with the exhibits attached, and the arguments of counsel.

It is conceded that at the time of the execution of the earliest of the leases (Law lease, 1895) now held by the plaintiff company, navigation had practically disappeared from the canals of Ohio, and that at the time it secured such

lease and the other leases and grants, navigation had wholly [fol. 189] ceased, and has never been resumed. It is further conceded that the leases are entered into under authority of law. And it must be conceded by reason of final judicial decree, that the Law lease as modified by the supplemental lease of December 10th, 1910, had been renewed for a term of thirty years from March 12th, 1925, (The Miami Valley Elevtric Co. v. Toledo, et al., 12 F., (2nd) 98), and the legal effect of the Purdy grant acquiesced in for a long period of years is established. (State ex rel. v. The Middletown Hydraulic Co., 114 O. S., 437.)

The history of the Ohio canal system begins with the passage of the initial Act by the General Assembly in 1820, and from that time until 1849 there were passed numerous Acts creating a canal system and providing for the acquirement of the necessary land by gift, grant, and condemnation, and for the construction and operation and regulations for its use. The system was completed in 1845 and was operated for public transportation by the state or its lessees until about the year 1895. In the process of the development of the legislative machinery for the canal system, as early as 1825, and again in 1828, and many times subsequently, the legislature recognized the propriety of and authorized the sale of surplus water of the canals. The policy and prac- [fol. 190] tice of leasing "surplus water" "not necessary for navigation," and the accepting of grants reserving to the grantor "water rights," thus early recognized, extended to all the canals of the Ohio system, and continued to be recognized by the state and the users of surplus water until this controversy arose, and discloses clearly the sovereign encouragement to the development of hydraulic energy, before and after the usefulness of the canals for navigation had ceased because of the development and popularity and general use of other and more rapid means of transportation.

The wisdom of the plan conceived by the early fathers of building a system of water highways over the state "to promote the agricultural, manufacturing and industrial interests of the state" at its formative period, and the operation of the same as a great vehicle of transportation for fifty years, was entirely justified by the unprecedented development and growth of the state and its industries during that time.

The year 1863 marked the beginning of a series of Acts of the General Assembly abandoning various sections of the canal "for canal purposes." This legislative surrender of portions of the canal and the authorization of the [fol. 191] use thereof for other purposes, gave rise to litigation in connection with the intervening rights of individuals holding water rights.

Navigation was of course the prime object and original main purpose in the building of the canals. It was a public purpose and exercised by the state in its governmental and sovereign capacity. During the time of the operation and use of the canals for transportation purposes, the use of water for hydraulic power purposes was merely incidental and subordinate to the main purpose. It accordingly became the established law, that when it became inexpedient or inadvisable to continue the canal for navigation purposes, or when some other public purpose, though local in nature, became more important, that part so affected might be abandoned without regard to and notwithstanding the water power leases. Hubbard v. Toledo, 21 O. S., 379; Elevator Co. v. Cincinnati, 30 O. S., 629; Fox v. Cincinnati, 33 O. S., 492, 104 U. S., 783, 785; Vought v. Ry. Co., 58 O. S., 123; Compare, Kaukauna Co. v. Green Bay, etc., 142 U. S., 254, 282; Hoagland v. Ry. Co., 111 Ind., 443.

The sale of surplus water, subordinate in the first instance and for many years thereafter to the primary purpose and use of the canals, gradually became a contributor [fol. 192] to the accomplishment of the maini purpose of "promoting the agricultural, manufacturing and industrial interests of the state" in the development of hydraulic power. It becomes obvious that this element of the state's business has become important when we consider that it has gone on without interruption, paralelling the business of navigation until that business outlived its usefulness, and continuing for thirty years thereafter as the chief if not the sole use to which the canals have been put, and returning to the state a revenue of eighteen millions of dollars,—nine millions of which were derived from water rentals of the Miami & Erie Canal alone. The revenue itself indicates a business of substantial proportions, to which private capital of necessity was attracted in the

building and enlarging of power plants, and to which corresponding property rights and vested interests have become involved.

All the leases herein involved were made pursuant to authority given by Act of the General Assembly in 1840. This statute remained unchanged until its amendment in 1917, and was recognized as meeting all modern requirements by its incorporation in the General Code of Ohio in 1910. Sections 14009 et seq., Ohio General Code; 38 O. L. 87. The leases were also made subsequent to the time that travel and transportation by canal had become too [fol. 193] slow for the then modern conditions. The position of the state had changed from that of operating the canal as a navigable highway, to the operation of a great power plant for the sale of power and water to the public. State ex rel v. The Middleton Hydraulic Co., 114 O. S., 437.

Viewed in the light of changed and altered circumstances brought about by modern progress and development, facts and situations basically the same may assume a new and different aspect. The relationship between the state and the lessees and grantees of water rights, in defining their respective rights, may call for solution differently, if the altered or changed condition warrants. When engaged in the business of contracting water privileges for the manufacture of power and energy as a principal business, the state acted in its proprietary capacity. It is a commercial proprietor, bound in its contractual engagements the same as individuals. State ex rel. v. Middletown Hydraulic Co., supra. That a state or subdivision thereof may act in such capacity, and when so doing is amenable to all the rules of law which bound private individuals, is well established in Ohio and elsewhere. South Carolina v. U. S., 199 U. S., 437; Vicksburg v. Vicksburg Water Works Co., 206 U. S., 496; Los Angeles v. Gas & Electric Corporation, 251 U. S., [fol. 194] 32; State ex rel. v. Middletown Hydraulic Co., supra; State v. Executors, 3 O. S., 309; R. R. v. State, 83 O. S., 251.

The leases and grants owned by the plaintiff are subject to a present day construction and interpretation in relation to the surrounding facts and circumstances in harmony with the present relationship of the parties. Ordinarily such writings are considered contracts. The state

we may now say in its proprietary capacity has treated them as contracts in accepting rentals, making new leases, contracting with lessees and owners for improvements, permitting the plaintiff to expand its plant by extensive improvements, and permitting the Law lease to be renewed under its own terms. Believing as we do that they assume the dignity of contracts, little difficulty is found in the solution.

The Supreme Court of the United States in the Dartmouth College case (Trustees v. Woodward, 17 U. S., 517), held that a charter granted by the British Crown to the Trustees was a contract within the meaning of the clause of the constitution which declares that no state shall make any law impairing the obligation of contracts, and that the Act of the legislature of New Hampshire altering the charter in a material respect was void under the constitution.

[fol. 195] In the case of Power Company v. City of Akron (240 U. S., 462), the court had before it a bill of complaint alleging that a municipality does not intend to institute proceedings to condemn, but does intend to take plaintiff's property rights without compensation, and that in so doing it purports to be acting under an ordinance which violates the contract clause of and the 14th amendment to the Federal Constitution, held that it was necessary under such allegations to take jurisdiction and determine the merits.

In Russell v. Sebastian, (233 U. S., 197) the same court having before it a franchise of a public service corporation and a municipal ordinance of the City of Los Angeles adopted in pursuance to the amendment to the California constitution, held that the franchise was a contract, and that the ordinance was ineffectual under the contract clause of the Federal constitution to deprive the corporation, which had accepted the offer of the state contained in the constitution before the amendment of its right to continue to lay pipes in the streets of the city.

In the case of Hayes v. Port of Seattle (251 U. S., 233), the rule is announced that a bill setting up obligations of contract with the state and charging that they were impaired by subsequent state legislation, presented a controversy under the constitution conferring jurisdiction [fol. 196] upon the District Court.

And in the case of City of Los Angeles vs. Los Angeles Gas & Electric Corporation, (251 U. S., 32), the same principle was again announced, wherein it was said that a franchise to use the streets for supplying the city and its inhabitants with electric light, acquired under the California constitution before the amendment of 1911, conveys contract rights which the city is not at liberty to destroy, and the property employed in their exercise cannot be taken by the city without due process of law—the payment of compensation. This same case also recognized the principle, that there is a distinction between the powers of a city when acting in its governmental capacity, and those which belong to it in its proprietary or quasi private capacity.

Equity will furnish the remedy in this case, as no adequate remedy at law exists. And while the action of the legislature may be construed as a repudiation of the state's contracts as distinguished from an action that only impairs its obligation, as treated in the Seattle case, supra, yet the law of Ohio furnishes no remedy at law under either the "contract clause" or the "due process" clause of the con-[fol. 197] stitution.

Connected with the discussion and conclusion arrived at above, it should be noted that in 1925 the General Assembly of Ohio passed an Act (111 O. L. 367) abandoning the same section (Lineal Part 2) as was attempted to be abandoned under the Act of May 11th, 1927. The former expressed a clear and unambiguous intention on the part of the legislature to protect the rights of the lessees of water. The statutory expressed intention to so protect, in this act (entirely absent in the later act) certainly is a recognition by the state of the contractual relationship between it and the lessees of water, and the abandonment, in the latter Act, of the same section of canal as was abandoned in the former, raises the query: How effective, if at all, was the re-abandonment feature of the latter Act?

Moreover, in 1920 an Act was passed (108 O. L., Part 2, 1138) abandoning Lineal Part No. 1 of the canal, and providing for the appraisement of the abandoned section, giving the City of Toledo an option of purchasing or leasing the same, but in either event, in clear and unequivocal

terms, protecting the rights of existing leases and the rights of the owners thereof to renewal. The City of Toledo decided to exercise the option of purchase, and in accordance therewith, and in accordance with the terms of the Act, and in due course received a deed for the abandoned portion, subject to the rights of the lessees of water. The [fol. 198] City of Toledo failed to carry out the provisions of the Act in reference to the adjustment and payment of compensation to the lessees, and upon its taking action for the purpose of "cutting off" the water from the abandoned section, this plaintiff instituted its suit in equity against the City of Toledo, and finally procured a permanent injunction against the city from so cutting off or draining the water from such section. (Maumee Valley Electric Co. v. City of Toledo, 13 F. (2nd,) 98.)

Obviously the carrying out of the mandate by the Superintendent of Public Works and the Director of the Department of Highways and Public Works, under the provisions of the Act of May 11th, 1927 (112 O. L. 360), in draining the water from Lineal Part No. 2 and preventing the water of the Maumee River from flowing into or through the abandoned portion (the water of the canal flowing northerly and passing from Lineal Part No. 2 to Lineal Part No. 1) would effectually nullify the force and effect of the final decree of the Court of Appeals. (Maumee Electric Co., v. City of Toledo, supra.) This point is raised by appropriate allegations in the bill and in the prayer wherein injunction is asked, "as impairing the obligations of a contract entered into between the State of Ohio and the City of Toledo in behalf of and for the benefit of plaintiff and as depriving plaintiff of its property rights under said contract without due process of law."

[fol. 199] The effect of the re-abandonment of Lineal Part No. 2, the legislative nullification of a judicial decree, the good faith or want of good faith of the legislature in legislating away the force and effect of such decree, and the remedy due plaintiff growing out of the contractual relationship between the State and the City of Toledo, are questions that may well seriously address themselves to a court of equity, but in view of the position taken by the court and the conclusions drawn upon the other angle of

the case, it is unnecessary to pass upon these considerations at this time.

Injunction allowed. See decree.

Donahue, Circuit Judge; Hickenlooper, District Judge, concur.

[fol. 200] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERLOCUTORY INJUNCTION ORDER—Filed Sept. 24, 1927

In this cause, it appearing,

1. That a temporary restraining order, heretofore on July 29, 1927, was granted by Honorable Benson W. Hough, District Judge in said Court, which temporary order has been extended through successive ten-day periods and is now in force restraining the defendants as set out in said temporary order;

2. That plaintiff has made application to said District Judge for an interlocutory injunction against the defendants restraining and suspending the enforcement, operation and execution of a statute of the State of Ohio upon the ground of the unconstitutionality of said statute as shown by the allegations of the verified bill of complaint in this suit in which temporary, interlocutory and final injunctive relief is prayed and that said District Judge has called to his assistance to hear and determine said application Honorable Maurice H. Donahue, Circuit Judge of the Sixth United States Judicial Circuit, and Honorable D. C. Westenhaver, District Judge for the Eastern Division of the Northern United States Judicial District of Ohio;

[fol. 201] 3. That since the institution of this suit defendant herein, the City of Toledo, Ohio, has instituted an action in the Court of Common Pleas of Lucas County, Ohio, to complete an appropriation and condemnation, and thereby determine the valuation of, and amount of money to be paid plaintiff herein for its water rights and privileges as described in the bill of complaint in this suit under its water leases and contracts therein set out and the plain-

tiff herein since the institution of said suit in said Court of Common Pleas has instituted a suit in said court through which will be determined the question of power in said City of Toledo so to appropriate and condemn said water rights and privileges;

4. That the parties plaintiff and defendant in this suit desire that the questions involved in said actions pending as aforesaid in said Court of Common Pleas be determined before a final hearing in this suit, if such final hearing shall become necessary, and defendants in this cause agree that plaintiff, on the allegations of the verified bill and affidavit on file in this cause in this court, is entitled to have the status quo as fixed by said temporary restraining order preserved and continued through interlocutory injunction until final hearing and determination on the pleading filed and pleadings or motions to be filed and any evidence that may be submitted on final hearing if such final hearing shall be necessary, said defendants being given proper extension of time for filing answer or motions prior to such hearing, and said defendants consenting and agreeing that such interlocutory injunction may be granted for the purposes aforesaid.

5. That the hydro-electric plant referred to in the verified bill has been constructed at great cost and expense and is of great value for the purposes therein set forth and that said claimed water rights of plaintiff referred to in said bill, if valid, are of great value, and that if defendants should proceed to carry out and should carry out the threats, as alleged in said bill, plaintiff's said rights and said plant will be destroyed and great and irreparable injury, damage and loss will come to plaintiff by reason thereof;

[fol. 202] 6. That all defendants herein and the Governor and Attorney General of Ohio have notice of and know the contents of this order and consent to the entry thereof:

Now, therefore, it is hereby ordered that the defendants and each of them and all of their officers, agents, associates, appointees and employees, respectively, be and they hereby are temporarily enjoined from in any way preventing, interrupting, lessening, interfering with, or otherwise abridging

or injuriously affecting (a) the use by the plaintiff of any and all of the canal water of that portion of the Miami and Erie Canal extending from the State dam and the intake adjacent thereto, located in the Maumee River immediately south of Grand Rapids, Ohio, to said hydro-electric plant and property located at Maumee, Ohio; (b) the flowage of water from said river into said canal at said dam and intake; (c) from diverting, causing or permitting to be diverted, either into said river or otherwise and either at the said Maumee side-cut or elsewhere, any of the water of said canal which, without such diversion would and will be available to the plaintiff in said canal at said hydro-electric plant and property; (d) from opening or causing or permitting to be opened, whether wholly or partially, the sluice gate located at or in the Maumee side-cut in the vicinity of the south corporation line of the municipality of Maumee, Ohio, or any other sluice gate or passage, the opening of which would or will injuriously affect either the volume or flowage or water in said portion of said canal extending between the points first aforesaid; (e) from closing or obstructing, whether wholly or partially, any gate or passage now available or used for the conveyance of water from said river into said portion of said canal; (f) from constructing or erecting and from causing or permitting to be constructed or erected, any bulkhead, dam or other structure or obstruction the purpose or result of which would be to prevent or lessen the flow of water in any part of said portion of said canal; and from doing, suffering or permitting any other act or thing in any way violative of the rights of the plaintiff secured to it under and by virtue of the leases, agreement and supplementary lease executed by the Board of Public Works of the State of Ohio and now owned by the [fol. 203] plaintiff, covering the right to use the waters of said portion of said canal, all until the final hearing and determination of this cause, as prayed for in the verified bill, or until the further order of this court.

It is further ordered that the bond heretofore given in this court upon said temporary restraining order shall stand released upon and this interlocutory injunction shall take effect upon the giving by the plaintiff of a bond in the sum of $5,000.00, executed by sufficient surety to be approved by the Clerk of this court, conditioned to secure to

the defendants the damages they may sustain if it be finally decided that said interlocutory injunction order ought not to have been granted.

And thereupon the plaintiff tendered to said Clerk of this court its bond in said sum executed by The Metropolitan Casualty Insurance Company of New York, as surety, and the same was duly approved.

It is further ordered on the application of defendants that the time for them respectively to file answers or motions to the bill of complaint in this cause be and it is hereby extended, but such answers or motions shall be filed and the issues made up at least ten days before the final hearing in this suit.

D. C. Westenhaver, District Judge. Maurice H. Donahue, Circuit Judge for the Sixth Circuit. Benson W. Hough, District Judge.

[fol. 204] In United States District Court

[Title omitted]

Acknowledgment of Service of and Consent to Temporary Injunction Order

To the Honorable Benson W. Hough and the Honorable the Judges called by him to his assistance on the application of the plaintiff for interlocutory injunction in the above cause:

We, the undersigned, respectively have received copies of the attached interlocutory injunction order, note the contents thereof and consent to its entry in this court for the time and purposes set out in said order.

The City of Toledo, Ohio, by F. M. Dotson, Its Director of Law and Solicitor. The Villages of Maumee and Waterville, Ohio, by F. M. Dotson, Their Solicitor. Roy Davis, Ralph E. Farnsworth, George Hoffman, Commissioners of Lucas County, Ohio, by Leroy W. Hunt, Prosecuting Attorney of Lucas Co., Ohio. George F. Schlessinger, As Supt. of Public Works, etc., A. V. Donahey, Governor of Ohio, by Edward C. Turner, Attorney General of Ohio.

[fols. 205-207] Bond on interlocutory injunction for $5,000, approved and filed September 24, 1927; omitted in printing.

[fol. 208] In United States District Court

[Title omitted]

Motion for Substitution of Party Defendant—Filed Sept. 8, 1928

Now comes the plaintiff and respectfully represents and shows to the court that since the institution of the above entitled suit on July 28, 1927 and during the pendency of said suit said defendant, George F. Schlessinger, resigned from the office of Director of Highways of the State of Ohio on June 15, 1928 and on that day ceased to hold said office, and plaintiff further represents that on said date of June 15, 1928 one Harry J. Kirk was duly appointed to said office of Director of Highways of the State of Ohio; that he thereupon duly qualified as such officer under the laws of Ohio and since then he has been and he still is the duly appointed, qualified and acting Director of Highways of the State of Ohio as the successor in said office to said George F. Schlessinger, resigned as aforesaid.

Plaintiff further represents that there are grave and difficult questions involved in said suit and that there is substantial need for continuing and maintaining said cause and obtaining an adjudication of the questions involved in order that plaintiff's property rights of great value involved in said suit may be properly and finally determined.

Wherefore, plaintiff respectfully moves the court for an order permitting and directing said suit to be continued [fol. 209] and maintained against said Harry J. Kirk, as the Director of Highways of the State of Ohio and successor in that office to said George F. Schlessinger, resigned as aforesaid.

U. G. Denman, and Karl E. Burr, Solicitors for plaintiff.

To the Honorable the Judges in the above entitled cause in the United States District Court for the Southern District of Ohio, Eastern Division:

The undersigned, Harry J. Kirk as Director of Highways of the State of Ohio, through his counsel, the Attorney Gen-

eral of Ohio, duly authorized under the laws of Ohio, hereby this 6th day of September, 1928, acknowledges receipt of a copy of the above motion by the plaintiff in the above entitled cause, voluntarily enters his appearance as a defendant in said cause, and hereby expressly consents to the granting of said motion and that said cause be continued and maintained against him as the successor in the office of the Director of Highways of the State of Ohio to George F. Schlessinger resigned, in order that an adjudication of the questions involved in said cause may be obtained.

Harry J. Kirk, Director of Highways of the State of Ohio, by Edward C. Turner, Attorney General of Ohio.

[fol. 210] In United States District Court

[Title omitted]

Order Substituting Harry J. Kirk as Party Defendant—Filed Sept. 8, 1928

This day this cause came on to be heard on the motion of the plaintiff for an order to permit and direct the above entitled cause to be continued and maintained by the plaintiff against Harry J. Kirk, as successor in the office of the Director of Highways of the State of Ohio to his predecessor in that office, George F. Schlesinger resigned, and the court being fully advised in the premises finds that said George F. Schlesinger resigned from the office of Director of Highways of the State of Ohio on June 15, 1928 and on that day ceased holding said office as such officer; that said Harry J. Kirk is the duly appointed, qualified and acting Director of Highways of the State of Ohio as the successor in said office to said George F. Schlesinger, resigned as aforesaid; that said Harry J. Kirk has been duly notified of the filing and pendency of said motion; that he expressly consents to the granting thereof by this court and to a substitution of himself as such Director of Highways of the State of Ohio as a defendant in said cause in the place of his predecessor in said office, George F. Schlesinger, resigned as aforesaid; that there is substantial need for continuing and maintaining said cause and obtaining an adju-

dication of the questions involved therein; and that said above entitled cause should be permitted to be continued [fol. 211] and maintained by the plaintiff against said Harry J. Kirk as such successor in said office of Director of Highways of the State of Ohio.

Now, therefore, it is ordered that said cause be and the same hereby is continued and shall be maintained by the plaintiff against said Harry J. Kirk as Director of Highways of the State of Ohio and as a defendant in this cause and that all orders heretofore entered by this court in said cause be and they hereby are continued and shall stand against said Harry J. Kirk as defendant as aforesaid in this cause and as the successor to said George F. Schlesinger in the office of the Director of Highways of the State of Ohio until the further orders of this court.

Maurice H. Donahue, Circuit Judge. Benson W. Hough, District Judge.

[fol. 212] In United States District Court

No. 534. In Equity

The Maumee Valley Electric Company, Plaintiff,

vs.

George F. Schlesinger, as Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio, and Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, as County Commissioners of Lucas County, Ohio; the Village of Maumee, Ohio, and the Village of Waterville, Ohio, and the City of Toledo, Ohio, Defendants

Final Decree—Filed December 3, 1928

This cause, coming on to be heard at this term on the pleadings, proofs and arguments of counsel, was thus heard before and was determined by Honorable Maurice H. Donahue, United States Circuit Judge, and Honorable Benson W. Hough and Honorable Smith Hickenlooper, United States District Judges, constituted and sitting as a court

in this cause under Section 380 of Title 28 of the United States Code, formerly Section 266 of the United States Judicial Code; and thereupon, upon consideration thereof, former defendant, George F. Schlesinger, having resigned from and quit the office of Director of the Department of Highways of the State of Ohio on June 15, 1928, and Harry J. Kirk having been thereupon duly appointed under the laws of Ohio as Director of the Department of Highways of the State of Ohio, and having been duly substituted as a defendant in this cause as such Director of the Department of Highways of said State succeeding said former defendants, George F. Schlesinger, resigned as aforesaid, and said Harry J. Kirk, as Director of Highways as aforesaid, having voluntarily entered his appearance in this cause as a defendant therein succeeding said George F. Schlesinger, resigned as aforesaid, and said Harry J. Kirk being since such substitution and entry of appearance as afore-
[fol. 213] said and now the duly appointed, qualified and acting Director of the Department of Highways of the State of Ohio, it is ordered, adjudged and decreed as follows, viz:

1. That on the issues joined in this cause the court finds for the plaintiff and against the defendants, including therein that the provisions of the Act of the General Assembly of the State of Ohio, hereinafter specifically described, mentioned and referred to, declaring or attempting to declare all leases, agreements and grants of, with and from the State of Ohio for water to be taken thereunder from that portion of the Miami and Erie Canal specifically described in said act, to be null, void and of no effect, and directing the State Highway Director of Ohio to drain the water out of said portion of said canal and to prevent the waters of the Maumee River from flowing into said portion of said canal and granting permission to the defendants to fill up said canal and obstruct the flow of the waters therein, are contrary to and in contravention of the Constitution of the United States and therefore null, void and of no effect with respect to and as affecting, or intended to affect, the leases, agreements and grants of the plaintiff in this cause, which leases, agreements and grants are specifically mentioned, described and referred to in the Bill of Complaint and the record of this cause;

2. And that the defendant, Harry J. Kirk, Director of Highways as aforesaid, and each of said other defendants and his and their successors respectively and his and their officers, agents, associates, appointees and employees and their respective successors in office and position, be and they hereby are, during the existence of plaintiff's said leases, agreements and grants, enjoined (a) from in any way or by any means draining or, except by the plaintiff, causing or permitting to be drained from that portion of the Miami and Erie Canal, or any part thereof, described as commencing at a line across said canal and the lands thereof just below the head of the Maumee side-cut near Maumee, Ohio, and extending thence southwesterly over and along said [fol. 214] Miami and Erie Canal, including the full width of the bed and banks thereof as defined by Buchanan's Survey, to and including the point or place where such canal joins with the Maumee River on the northwesterly side thereof and above or southwesterly from the Grand Rapids, Ohio State Dam in Providence Township, Lucas County, Ohio, and being that portion of said Miami and Erie Canal as described and referred to in Section 1 of an Act of the General Assembly of Ohio, entitled, "An Act to abandon a portion of the Miami and Erie Canal in Lucas County, Ohio, and to devote the same to highway and other purposes and to repeal all acts in conflict therewith", passed May 11, 1927, and found on page 360 to 363 inclusive of Volume 112 of the Laws of Ohio, any of the waters of said canal which, except for such draining, would and will be available to the plaintiff in this cause for its use, to the amount provided and called for in plaintiff's said leases, agreements and grants, namely, the Robert J. Law, Trustee Lease, the Agreement and Supplementary Lease the Thomas W. Studer Lease, the A. C. Tryon Lease, The Maumee Paper Company Lease, the George K. Detwiler Lease and the James Purdy Quit-claim Grant to the State of Ohio, each and all of which are particularly mentioned, described and referred to in the Bill of Complaint and the record of this cause; and (b) from doing, or causing to be done, any act, matter or thing in any way, or by any means, with respect to said Maumee River, or said portion above described of said Miami and Erie Canal, that would prevent or in anywise interfere with or obstruct the continuous flow

into or throughout or on northeasterly beyond said portion above described of said canal of any of the waters of or from said Maumee River or of said portion of said canal which, except for such prevention, obstruction, or interference, would and will be available to the plaintiff in this cause for its use, to the amount provided and called for in plaintiff's said leases, agreements and grants.

It is further ordered, adjudged and decreed that the plaintiff have and recover from the defendant, Harry J. [fol. 215] Kirk, as Director of the Department of Highways of the State of Ohio, its costs herein expended, taxed at $—, for which execution is hereby awarded.

Smith Hickenlooper, District Judge. Benson W. Hough, U. S. District Judge.

Approved: Edward C. Turner, Attorney General, and Albert M. Calland, Special Counsel, and Joseph A. Godown, Special Counsel, Solicitors for Defendant Kirk. U. G. Denman and Karl E. Burr, Solicitors for Plaintiff.

[fol. 216] In United States District Court

[Title omitted]

Petition for Appeal to the Supreme Court of the United States—Filed December 20, 1928

The defendants herein, conceiving themselves aggrieved by the decree made and entered on the 3d day of December, 1928, in the above entitled cause, do each severally hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and pray that cost bond on appeal be fixed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

George W. Ritter, Director of Law; Martin S. Dodd, Assistant Director of Law, Solicitor for the Defendant The City of Toledo, Ohio. Edward C. Turner, Attorney General of Ohio; A. M. Calland,

and J. A. Godown, Solicitors for the Defendant Harry J. Kirk, as Superintendent of the Department of Highways and Public Works of the State of Ohio. Leroy W. Hunt, Prosecuting Attorney of Lucas County, Ohio, Solicitors for the Defendants Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, as County Commissioners of Lucas County, Ohio. George W. Ritter, Solicitors for the Defendant The Village of Maumee, Ohio. George W. Ritter, Solicitors for the Defendant The Village of Waterville, Ohio.

[fol. 217] In United States District Court

[Title omitted]

Assignment of Errors—Filed December 20, 1928

Now come the defendants herein and severally file the following assignment of errors upon which they will severally rely upon the prosecution of the appeal herein from the decree of this Honorable Court, dated December 3, 1928:

1. That the District Court erred in decreeing the Act of the General Assembly of Ohio, passed on May 11, 1927, 112 Ohio Laws 360-363, Sections 14178-14178-12, inclusive, of the General Code of Ohio, to be in contravention of and contrary to the Constitution of the United States so as to deprive plaintiff of rights without due process of law under leases and agreements referred to in the final decree of said District Court.

2. That the District Court erred in decreeing the Act of the General Assembly of Ohio, passed on May 11, 1927, 112 Ohio Laws 360-363, Sections 14178-14178-12, inclusive, of the General Code of Ohio, so as to impair the obligations of agreements and leases between plaintiff and the State of Ohio referred to in the final decree of said District Court [fol. 218] in contravention of and contrary to the Constitution of the United States.

3. That the Act of the General Assembly of Ohio, passed on May 11, 1927, 112 Ohio Laws 360-363, Sections 14178-14178-

12, inclusive, of the General Code of Ohio, is not in contravention of or contrary to the Constitution of the United States.

4. That the decree herein is contrary to the law.

Wherefore, the defendants severally pray that said decree be reversed.

George W. Ritter, Director of Law, and Martin S. Dodd, Assistant Director of Law, Solicitors for the Defendant The City of Toledo, Ohio. ——— ———, Solicitors for the Defendant Harry J. Kirk, as Superintendent of the Department of Highways and Public Works of the State of Ohio. Edward C. Turner, Attorney General of Ohio; A. M. Calland, and J. A. Godown, Solicitors for the Defendants Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, as County Commissioners of Lucas County, Ohio. George W. Ritter, Solicitors for the Defendant The Village of Maumee, Ohio. George W. Ritter, Solicitors for the Defendant The Village of Waterville, Ohio.

[fol. 219] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed December 20, 1928

On application of defendants, it is ordered that an appeal to the Supreme Court of the United States from the final decree herein be, and the same is hereby allowed, that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States. It is further ordered that the bond on appeal be fixed at the sum of one thousand dollars ($1,000.00).

Benson W. Hough, Judge of the United States District Court, Southern District of Ohio.

[fols. 220-229] Bonds on appeal for $1000, approved and filed December 20, 1928, and January 3, 1929, omitted in printing.

[fol. 230] Citation, in usual form, showing service, on U. G. Denman and Karl E. Burr, filed January 3, 1929, omitted in printing.

[fol. 231] In United States District Court

[Title omitted]

Praecipe for Transcript of Record—Filed Dec. 20, 1928

To the Clerk:

Please prepare transcript of record on appeal in the above entitled cause for the Supreme Court of the United States, and include therein the following:

1. Title page.
2. Caption.
3. Bill of complaint.
4. Temporary restraining order filed July 29, 1927.
5. Bond of plaintiff.
6. Order extending temporary restraining order filed August 19, 1927.
7. Order extending temporary restraining order filed August 29, 1927.
8. Order extending temporary restraining order filed Sept. 8, 1927.
9. Order extending temporary restraining order filed Sept. 17, 1927.
10. Answers to Bill of Complaint.
11. Stipulation and agreement between the parties plaintiff and defendant on the evidence and the stipulation exhibits attached thereto numbered 1 to 25 both inclusive.
12. Opinion of the court.
13. Order granting interlocutory injunction filed September 24, 1927, and acknowledgment of service thereof and consent thereto.
14. Bond of plaintiff.
15. Motion for and consent to the substitution of Harry J. Kirk as party defendant.
16. Order substituting Harry J. Kirk as party defendant, filed September 8, 1928.
17. Final decree of the court.

18. Petition for appeal filed by defendants.

19. Assignment of errors filed by defendants.

20. Order by court allowing appeal and fixing amount of appeal bond.

21. Bonds filed by defendants.

22. Copy of citation and acknowledgment of service thereof.

[fol. 232] 23. Præcipe for transcript of record.

24. Stipulation re certification of record.

25. Clerk's certificate showing what portions of the record are included by request of each party.

George W. Ritter, Martin L. Dodd, Solicitors for the Defendant The City of Toledo, Ohio. Edward C. Turner, Attorney General of Ohio, A. M. Calland, J. A. Godown, Solicitors for the Defendant Harry J. Kirk, as Superintendent of the Department of Highways and Public Works of the State of Ohio. Herman A. Kenezes, Assistant Prosecuting Attorney; Leroy W. Hunt, Prosecuting Attorney of Lucas Co., Ohio, Solicitors for the Defendants Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, as County Commissioners of Lucas County, Ohio. George W. Ritter, Solicitors for the Defendant The Village of Maumee, Ohio. George W. Ritter, Solicitors for the Defendant The Village of Waterville, Ohio.

Service of the foregoing Præcipe acknowledged this 3rd day of January 1929. All parts of the record desired by Appellee, The Maumee Valley Electric Co., are named in the Præcipe.

U. G. Denman and Karl E. Burr, Solicitors for The Maumee Valley Electric Company, Appellee.

[fol. 233] In United States District Court

[Title omitted]

Stipulation re Certification of Record—Filed Jan. 3, 1929

In accordance with the General Rules of this court, it is hereby agreed by and between the parties of their respective counsel that the record as presented to the Clerk by the

printer may be certified by the Clerk, as required by law, as a true, full and complete copy of the original pleadings, papers, exhibits and orders used on the trial of this cause, as set forth in the praecipe for transcript, without further comparison by the Clerk.

George W. Ritter, Martin L. Dodd, Solicitors for the Defendant The City of Toledo, Ohio. Edward C. Turner, Attorney General of Ohio, A. M. Calland, J. A. Godown, Solicitors for the Defendant Harry J. Kirk, as Superintendent of the Department of Highways and Public Works of the State of Ohio. Herman G. Kenezee, Asst. Pros. Atty.; Leroy W. Himes, Pros. Atty. of Lucas County, Ohio, Solicitors for the Defendants Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, as County Commissioners of Lucas County, Ohio. George W. Ritter, Solicitors for the Defendant The Village of Maumee, Ohio. George W. Ritter, Solicitors for the Defendant The Village of Waterville, Ohio. U. G. Denman, Karl E. Burr, Solicitors for the Plaintiff, The Maumee Valley Electric Company.

[fols. 234 & 234½] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 235 & 235a] In United States District Court

[Title omitted]

Order Enlarging the Time for Docketing Case and Filing Record—Filed in Supreme Court Feb. 2, 1929

For good cause shown, the time to docket the above entitled case and file the record thereof with the Clerk of the Supreme Court of the United States is hereby enlarged until and including the 16th day of January, 1929.

Benson W. Hough, District Judge.

[fols. 235b & c] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENLARGING THE TIME FOR DOCKETING CASE AND FILING RECORD—Filed in Supreme Court Feb. 2, 1929

For good cause shown, the time to docket the above entitled case and file the record thereof with the Clerk of the Supreme Court of the United States is hereby enlarged until and including the 2nd day of February, 1929.

Benson W. Hough, District Judge.

[fol. 235d] [File endorsement omitted.]

[fol. 236] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION OF NECESSARY PARTS OF THE RECORD—Filed Feb. 16, 1929

The appellants contend that the act of the General Assembly of Ohio, passed May 11, 1927, and found in 112 Ohio Laws, page 360, sections 14178-14178-12, inclusive, of the General Code, does not

(a) deprive plaintiff of any property or rights without due process of law;

(b) impair the obligation of any contract growing out of the leases, agreements and grants of the appellee.

Appellants' contention is based on the following:

In constructing and maintaining the Miami and Erie canal, as a part of the general canal system of the State of Ohio, the State of Ohio acted in a sovereign or governmental capacity. The leases of water from said canal for hydraulic power purposes were entirely incidental and subordinate to the man purpose and were, therefore, also acts in a sovereign or governmental capacity.

[fol. 237] Until the General Assembly of the State of Ohio determined and declared that the Miami and Erie canal, or any part thereof, should no longer be maintained, it continued to be a canal and the maintenance thereof continued to be a sovereign or governmental function. The actual

cessation of transportation on the canal did not change its character. It continued to be a canal until the General Assembly of Ohio, by its act of May 11, 1927, declared that the property occupied by the canal should be devoted to another public purpose, to-wit, the construction of a highway.

All leases for hydraulic power purposes made from the time the canal was constructed until the General Assembly, by its act of May 11, 1927, declared the necessity of abandoning the canal and devoting the property to another public purpose, were made by the state in its sovereign or governmental capacity, and were all subject to the sovereign or governmental power of the state to abandon and discontinue the canal and use the property for other public purposes.

The State, having the right to abandon the canal for navigation purposes, upon the passage of the Act of May 11, 1927, had the right to withdraw the water from the canal without liability to appellee.

The State, having by the Act of May 11, 1927, declared the necessity of abandoning the canal, is required to return the water to the Maumee River at the point where the water is now run into the canal, so that the water will flow in its natural water course, namely, the Maumee River, through the Villages of Waterville and Maumee, and a part of the City of Toledo.

The leases from the State of Ohio to the appellee were executed and delivered after the Supreme Court of Ohio and the Supreme Court of the United States had determined that the leases of surplus water of the canal would not im-[fol. 238] pose upon the State an obligation to keep up the canal for the sole purpose of meeting the requirements of such leases, that the State was not required to maintain the canal for navigation for a longer period than public necessity seemed to require, that whenever the public necessity no longer required the canal it might be abandoned, and if abandoned, the water might be withdrawn altogether, and that the withdrawing of the water from the canal pursuant to abandonment created no liability in favor of the owners of leases, except to forego the further collection of rents or refund a reasonable portion of so much of the rents as had been paid in advance.

The State, by receiving rents on account of water leases, cannot thereby change to a public purpose the incidental use of supplying of water to holders of the leases; such incidental use of the canal is a private use as distinguished from a public one and continues as such notwithstanding the acts of any officers of the State.

The State, by its having made the leases and having accepted the rentals thereunder, cannot, in the absence of legislation expressly so declaring, change the public purpose of a canal from "navigation" to "furnishing water pursuant to water leases," even though the use of the canal for navigation purposes had been discontinued by the public.

The abandonment of the canal for navigation could not result from the lack of use thereof by the public, but must result from legislative enactment by the State, first declared by the act of May 11, 1927, as to the part of the canal here involved. The leases in question were executed under and pursuant to 38 Ohio Laws, 87, 113, enacted March 23, 1840. Pertinent sections are sections 20, 21, 22 [fol. 239] and 23 of Chapter 23, Swan's Statutes of Ohio, 1841 (shown without change in sections 218-86-87-88-89 of Bates Revised Statutes, Fifth Edition, Sections 14009-10-11-12, General Code of Ohio, 1910), from which time until 1894 the canal was used by the general public for navigation purposes.

The authority granted to the Board of Public Works by 38 Ohio Laws, 87-113, cannot be enlarged by implication as a result of the change of conditions after the enactment thereof by the General Assembly.

Therefore:

The appellee has no vested right to continue the use of the surplus water from said canal after the abandonment and discontinuance thereof by the state and has no property right therein for which it is entitled to compensation.

The sovereign or governmental power of the state to abandon or discontinue the Miami and Erie canal was a part of the leases, agreements and grants to the appellee, and the act of the General Assembly abandoning and discontinuing the canal is in accordance with those leases,

agreements and grants and does not impair any provision thereof.

Appellants think the following parts of the record are necessary for the consideration of the points above set out:

1. Title page.
2. Caption.
3. Bill of complaint.
4. Temporary restraining order filed July 29, 1927.
5. Bond of plaintiff.

[fols. 240 & 241] 6. Order extending temporary restraining order filed August 19, 1927.

7. Order extending temporary restraining order filed August 29, 1927.
8. Order extending temporary restraining order filed September 8, 1927.
9. Order extending temporary restraining order filed September 17, 1927.
10. Answers to Bill of Complaint.
11. Stipulation and agreement between the parties plaintiff and defendant on the evidence and the stipulation exhibits attached thereto numbered 1 to 25 both inclusive.
12. Opinion of the court.
13. Order granting interlocutory injunction filed September 24, 1927.
14. Bond of plaintiff.
15. Motion for and consent to the substitution of Harry J. Kirk, as party defendant.
16. Order substituting Harry J. Kirk, as party defendant, filed September 8, 1928.
17. Final decree of the court.
18. Petition for appeal filed by defendants.
19. Assignmnt of errors filed by defendants.
20. Order by court allowing appeal and fixing amount of appeal bond.
21. Bonds filed by defendants.
22. Copy of citation and acknowledgment of service thereof.
23. Praecipe for transcript of record and acknowledgment of service thereof.

24. Stipulation re certification of record.
25. Certification of transcript of record.

Respectfully submitted.

Gilbert Bettman, Attorney General; Joseph A. Godown, Special Counsel, Solicitors for the Appellant Harry J. Kirk, as Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio. George W. Ritter, Solicitors for the Appellants Roy E. Davis, Ralph E. Farnsworth, and George R. Hoffman, as County Commissioners of Lucas County, Ohio. George W. Ritter, Solicitor for the Village of Maumee, Ohio, the Village of Waterville, Ohio, and the City of Toledo, Ohio.

Appellee, The Maumee Valley Electric Company, through its counsel, hereby acknowledges service of the above Statement of Points and Designation of Necessary Parts of the Record in the above entitled cause, this 11th day of February, 1929, and said appellee, through its said counsel, designates the same parts of the record in said cause for printing on the appeal as are above designated by appellants.

The Maumee Valley Electric Company, Appellee, by U. E. Denman, and Karl E. Burr, Its Solicitors and Counsel.

[fols. 242-244] [File endorsement omitted.]

Endorsed on cover: File No. 33,983. Southern Ohio D. C. U. S. Term No. 674. Harry J. Kirk, as Superintendent of Public Works and Director of the Department of Highways and Public Works of the State of Ohio, etc., et al., appellants, vs. The Maumee Valley Electric Company. Filed February 4th, 1929. File No. 33,983.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENLARGING THE TIME FOR DOCKETING CASE AND FILING RECORD—Filed in Supreme Court April 12, 1929

For good cause shown, the time to docket the above entitled case and file the record thereof with the Clerk of the Supreme Court of the United States is hereby enlarged until and including the 16th day of February, 1929.

Benson W. Hough, District Judge.

[File endorsement omitted.]